Written Submission in Support of Delta Conveyance Project Certification of Consistency with the Delta Plan

1 Introduction

This document is the California Department of Water Resources' (DWR's) written submission (WS) for responding to allegations from the appeals and written submissions received on DWR's *Delta Conveyance Project Certification of Consistency with the Delta Plan* (Certification) (C20257) (DCP.AA1.2.00001). The WS provides responses to issues raised by the 10 appellants in their appeals (Table 1). In addition to appeals, each appellant also submitted a written submission. The responses are organized in this WS by Delta Plan policy and then appeal. Where the same or similar issues are raised by multiple appellants, cross-references are used to reduce repetition and to provide a comprehensive response. This approach provides a concise and nonredundant WS that addresses the relevant substantive allegations of appellants' appeals and written submissions within the 200-page limit stated in the Nov. 24, 2025, Delta Stewardship Council's (DSC) Notice of Hearing and Schedule of Written Submissions.

Table 1. Appeals Raised on the Delta Conveyance Project Certification of Consistency with the Delta Plan

Appeal Number	Appellant
C20257-A1	Delta Protection Commission
C20257-A2	Courtland Pear Fair
C20257-A3	County of Sacramento and Sacramento County Water Agency
C20257-A4	Steamboat Resort
C20257-A5	San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, Restore the Delta, California Sportfishing Protection Alliance, Center for Biological Diversity, Friends of the River, California Indian Environmental Alliance, Sierra Club California, and Little Manila Rising
C20257-A6	Sacramento Area Sewer District
C20257-A7	City of Stockton
C20257-A8	South Delta Water Agency
C20257-A9	San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta
C20257-A10	DCC Engineering Co

The Delta Reform Act and the DSC's Administrative Procedures Governing Appeals direct that the appellant has the burden to show that the Certification is not supported by substantial evidence in the record. Furthermore, an appeal must set forth the basis for an alleged inconsistency with the Delta Plan and provide:

> (4) A statement of the factual allegations upon which the appeal is based.
>
> (5) A list of the specific Delta Plan policies that the appellant alleges the proposed covered action is inconsistent with, and for each policy identified, both of the following:
>
> (A) A concise statement of the authority, evidence, and arguments relied on to support the appellant's claim that the proposed covered action is inconsistent with the Delta Plan policy.
>
> (B) How the claimed inconsistency will have a significant adverse impact on one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people and property in the Delta.
>
> (Cal. Code Regs., tit. 23, § 5022 (c)(4), (5).)

While appeals should cite inconsistencies with specific Delta Plan policies and how those inconsistencies result in significant impacts on the coequal goals or implementation of a government-sponsored flood control program, all appeals also included procedural arguments. This WS complies with California Code of Regulations, title 23, section 5029 and responds directly to the relevant substantive allegations raised in the appeals and supporting appellants' written submissions, citing the substantial evidence in the record to support the Certification. Administrative record numbers (e.g., DCP.AA1.2.00001) are used throughout to cite supporting documents in the record.

The written submissions of some appellants, which should be limited to claims and arguments raised in their respective appeals, in fact raised new issues. These issues should therefore be waived, as noted in responses in Section (Sec.) 3, *Policies*. Moreover, as explained in DSC's Nov. 24, 2025, Notice of Hearing and Schedule of Written Submissions, DSC "will not consider new claims or arguments that were not raised in the appeals." (*Id.* p. 4; see also Cal. Code Regs., tit. 23, § 5029(c)(2) ["An appellant . . . shall not introduce additional grounds for appeal in a written submission. Those additional grounds shall not be considered as part of the appeal."].)

Sec. 2, *General Topics*, of this WS addresses general topics (i.e., topics that are nonsubstantive, not tied to a specific policy, or procedural), and Sec. 3 addresses issues tied to specific Delta Plan policies. The appeals are discussed in a standard order (A3, A6, A7, A1, A5, A8, A9, A2, A4, and A10) based not on the order of submission but rather on the scope of comments and similarities to optimize cross-referencing and minimize redundancy. Headings designate the topic area of a response, and in-line headings guide the reader and facilitate cross-referencing to the various components of a response. These components include an issue summary followed by applicable background information (e.g., context,

definitions, legal requirements), and DWR's argument in response. To aid the reader, the contents of the appeals and appellants' written submissions were assigned a comment number (see *Index of Appeal Comments and Documents Supporting DWR's Written Submission*), similar to the approach used in the Final Environmental Impact Report (FEIR) for the Delta Conveyance Project (DCP, the covered action). These comment numbers, which are shown in square brackets (e.g., **[A1-1])** at the end of the applicable issue summary and response, are intended to allow the reader to connect the issue and response in this WS to the applicable full text of the comment in an appeal.[1] Appellants' written submission comments include the appeal number and "WS" in the comment number. Appellants represented by Somach (A3, A6, A7) elected to submit a joint written submission, and the appeal number for these comments is "AS."

Sec. 4, *Conclusion*, summarizes DWR's conclusion regarding the appeals and its request that the DSC deny the appeals.

Sec. 5, *Objections*, provides a table of appellants' requested supplemental or official notice documents and DWR's objections to those documents (Table 5-1) and a table of documents that must be rejected because they are not part of DWR's record and not addressed in appellants' requests to supplement the record or for official notice (Table 5-2).

This WS frequently refers to the Certification, as such, by providing a page number and the administrative record number (DCP.AA1.2.00001). All references to FEIR chapters and appendices in this WS refer to Vol. 1 of the FEIR unless Vol. 2 is specified. Where a specific FEIR chapter is referenced, the chapter number and title are included at first use. Subsequent references to the chapter are identified by chapter number only. All mitigation measures and environmental commitments (ECs) referenced in this submission are part of DWR's adopted and enforceable Mitigation Monitoring and Reporting Program (MMRP) for the DCP (DCP.C.1.00002).

2 General Topics

2.1 Nonsubstantive Comments

Appeals often contain general information not tied to a specific Delta Plan policy, such as introductory text; support for or opposition to the DCP in a manner not tied to the specific

[1] The bracketed comment numbers are included at the end of both issues and responses to aid the reader in understanding how specific comments were addressed, sometimes across multiple responses. Provision of comment numbers is not a Delta Plan requirement. Comment numbers may not be inclusive of all comments relevant to the response. Not all comment numbers are shown in this WS, particularly those related to broad or general topics or exhibits, or those not relevant to the Delta Plan consistency process (see *Index of Appeal Comments and Documents Supporting DWR's Written Submission*).

policies of the Delta Plan; or background information not tied directly to the Certification. This type of information does not require a response from DWR and should not be considered by the DSC in determining whether the Certification is supported by substantial evidence. **[Many comments fall into this category.]**

2.2 Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record

Issue. Appellants assert that the Certification does not meet the substantial evidence standard. Appellants have submitted arguments that relate to the definition of legal application of "substantial evidence"; the DCP's impact on the coequal goals; completeness and scope of the administrative record; and the Covered Action Portal. **[A1-9, A1-10, A1-11, A1-67, A1-68, A1-69, A3-12, A3-13, A6-13, A6-14, A7-12, A7-13, AS-WS-4]**

Response: Limited Nature of Review Under Substantial Evidence Standard. The DSC's role in adjudicating an appeal under the substantial evidence standard is limited to determining whether substantial evidence in the record supports DWR's Certification, not to reweigh record or extra-record evidence to decide who has the better argument. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 [under the substantial evidence standard of review, a court may not set aside an agency's approval on the ground that an opposite conclusion would have been equally or more reasonable for, on factual questions, a court does not to weigh conflicting evidence and determine who has the better argument]; *Slone v. El Centro Reg'l Med. Ctr*. (2024) 106 Cal.App.5th 1160, 1173 [the power of an appellate body "begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact"].)

Substantial evidence means evidence that is "reasonable in nature, credible, and of solid value . . . ." (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.) Although speculation or conjecture alone is not substantial evidence (*California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 308), substantial evidence includes "reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Determination Regarding Appeal of the Certification of Consistency by San Joaquin Area Flood Control Agency for Smith Canal Gate Project (March 21, 2019) (2019 Determination Regarding C20188) (DCP.AA2.1.00098, p. 6).) And "a disagreement among experts considering the same facts in the record does not establish a lack of substantial evidence in the record." (2019 Determination Regarding C20188 (DCP.AA2.1.00098, p. 23); *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 851-852; see also *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626 ["Pointing to evidence of a disagreement with other agencies is not enough to carry the burden of showing a lack of substantial evidence to support the City's finding"].)

To meet their burden, appellants were required to "set forth in [their] brief all the material evidence, not merely evidence supporting its position" and demonstrate that there was "no substantial evidence in the record to support the agency's decision." (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1072.) Where an appellant's brief "fails to recite and discuss the record that supports the challenged agency decision, the appellant is deemed to have forfeited the substantial evidence argument." (*Ibid.* [court of appeal agreed with the DSC that an appellate "forfeited its claim of error by offering a one-sided recitation of the evidence"].) "The reason for this is that 'if the appellants fail to present us with all the relevant evidence, then the appellants *cannot* carry their burden of showing the evidence was insufficient to support the agency's decision because support for that decision may lie in the evidence the appellants ignore.'" (*Ibid.*, original italics.) "Only if no reasonable person could reach the conclusion reached by the administrative agency, based on the entire record before it, will a court conclude that the agency's findings are not supported by substantial evidence." (*Akella v. Regents of University of California* (2021) 61 Cal.App.5th 801, 814.) In addition, under the substantial evidence standard of review, allegations unsupported by citation to evidence or analysis linking them to the applicable Delta Plan policy forfeits the argument. (*Planning & Conservation League v. Department of Water Resources* (2024) 98 Cal.App.5th 726, 756.) **[A1-9, A1-10, A1-11, A1-67, A1-68, A1-69, AS-WS-4]**

Response: Failure to Identify How Covered Action Will Have a Significant Impact on Coequal Goals. As discussed in Sec. 3 for each appealed policy, DWR has demonstrated consistency with each policy and therefore, pursuant to G P1 (b)(1), the Certification is not required to demonstrate consistency with the Delta Plan based on a showing that on the whole the covered action is consistent with the coequal goals. Nevertheless, the Certification demonstrates based on substantial evidence that the DCP is on a whole consistent with the coequal goals. Appellants fail to meet their primary burden to demonstrate that substantial evidence does not support one or more of DWR's policy consistency determinations. Furthermore, appellants fail to demonstrate that substantial evidence does not support DWR's determination that the DCP is on the whole consistent with the coequal goals. To comply with DSC's appeal procedures, appellants must cite how a proposed covered action is inconsistent with one or more Delta Plan policies, and how, as a result of that inconsistency, the action will have a significant impact on the achievement of one or both of the coequal goals or implementation of a government-sponsored flood control program (Wat. Code, § 85225.10 (a)-(b); Cal. Code Regs., tit. 23, § 5022(c)(5)). When appellants fail to meet this threshold requirement, their appeals should be dismissed. As described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. **[Many comments fall into this category.]**

Response: Completeness and Scope of Administrative Record. As described in Sec. 3.4, *Approach to a Full and Complete Administrative Record*, of the Certification (DCP.AA1.2.00001), the administrative record for the Certification includes documents that

DWR relied on in developing the Certification; these documents provide substantial evidence supporting DWR's detailed findings. The administrative record consists of documents related to the DCP (e.g., environmental permits, engineering memoranda, public comments, and outreach materials), Certification supporting documents, and other documentation that provides background and support for the Certification. Although the administrative record for this Certification is expansive, its size is appropriate given the scope of the DCP and the substantial evidence standard of review. As demonstrated throughout this WS, DWR's determination that the DCP is consistent with the Delta Plan is based on extensive evidence in the robust administrative record that is reasonable in nature, credible, of solid value, and determined using facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. **[A3-13, A6-14, A7-13]**

Response: Issues with the Covered Action Portal. Appellants allege that issues with organization of the Certification and record documents on the DSC's Covered Action Portal and the need for a hyperlinked record index support their request for an extension of the appeal period. Appellants' procedural arguments are not an appealable issue. Furthermore, the DSC granted requests for an extension of the hearing and associated written submittals on Nov. 24, 2025, and, therefore, these arguments are moot. Moreover, the procedural arguments are meritless. DWR followed the DSC's Administrative Procedures Governing Appeals for submission of the Certification on Oct. 17, 2025. In addition to submitting the Certification and supporting documents through the Covered Action Portal, that same day, DWR posted the certification form, Certification, all Certification attachments, and an explainer document on DWR's DCP's Permit Portal (https://www.deltaconveyanceproject.com). In addition, on Oct. 17, 2025, DWR sent a notice indicating that the Certification was filed and included links to these materials. This notice was sent through the DCP email reflector, which sends emails to a database of more than 11,000 people. Per the Administrative Procedures Governing Appeals, the record is not required to be submitted until after the Notice of Appeal, and a hyperlinked record index is not required at all. However, DWR provided a hyperlinked draft record index on Nov. 14, 2025, and a hyperlinked final record index on Dec. 11, 2025, upon receipt of URLs from the DSC after completing their upload. **[A3-12, A6-13, A7-12]**

2.3 Delta Protection Commission Role and Authority During an Appeal

Issue. Appellant alleges a special role for the Delta Protection Commission (DPC) as part of the certification process. **[A1-35, A1-37, A1-45, A1-WS-2, A1-WS-3]**

Response: DPC Role. The DPC elected to file an appeal. On Nov. 26, 2025, the DSC sent an email to the service list addressing the status and WS deadline applicable to the DPC when, as here, DPC elects to participate as a party-appellant. DSC set the deadline for DPC submittals and DSC has the discretion to manage the appeal hearing process. Anything that

DPC submits outside the topics raised in their original appeal should not be considered. Additionally, regarding Public Resources Code section 29773, the DSC email sent on Jan. 16, 2026, indicates that section 29773 was not relevant to the current appeal process. **[A1-35, A1-37, A1-45, A1-WS-2, A1-WS-3]**

2.4 Early Consultation with DSC

Issue. Appellants object to early consultation between DWR and DSC staff prior to completion of the Certification and assert that the early consultation process should be open to the public. **[A3-19, A6-23, A7-21, A9-15, AS-WS-78]**

Response: Early Consultation Is Not an Appealable Issue. The claim that early consultation for this, or any other covered action, must be public is not supported by information in the California Water Code, Delta Reform Act, or DSC's Administrative Procedures Governing Appeals. Early consultation procedures, as established by DSC, are not public meetings and do not require public participation. Furthermore, this incorrect claim that the early consultation process for the DCP should have been public fails to raise an appealable issue: it does not affect whether the Certification is supported by substantial evidence. **[A3-19, A6-23, A7-21, A9-15, AS-WS-78]**

Response: Early Consultation Focused on the Delta Stewardship Council Certification Process. As recommended in the Covered Action Checklist provided by DSC staff, DWR participated in early consultation with DSC staff for the DCP. Topics of discussion at these early consultation meetings for the DCP included, but were not limited to, how to file a certification of consistency regarding relevant ecosystem restoration chapter policies (because the DSC was completing the rulemaking process for that amendment in 2025) and how to effectively upload the whole administrative record for the DCP given bandwidth limitations on DSC's Covered Action Portal. See Sec. 5, *Objections*, regarding the demand for early consultation records. **[A3-19, A6-23, A7-21, A9-15, AS-WS-78]**

2.5 Timing of Submission

Appellants argue for varying reasons that the timing of the submission of the Certification was inappropriate and should have been delayed. This section addresses timing as it relates to geotechnical activities and regulatory and contractual processes. There is no requirement in the Delta Reform Act or Delta Plan regulations dictating when in the planning process a certification of consistency can be submitted, other than that the certification process must be completed prior to the start of implementation of the covered action.

2.5.1 Geotechnical Activities

Issue. Appellant alleges that the timing of submission of the Certification should have been delayed because DWR has not completed geotechnical investigations in 2024 and 2025 that would inform project design refinements. **[A5-43, A8-18, AS-WS-4]**

Response: Timing of Submission Relative to Geotechnical Activities Is Appropriate and Not Appealable. The Certification provides findings of consistency with all applicable Delta Plan policies for the DCP at the level of design at the time it was submitted based on substantial evidence. Although additional geotechnical activities would have generated additional evidence, the evidence supporting the Certification is already substantial. Appellants have the burden of proving otherwise to prevail on appeal and cannot meet that burden by alleging that the Certification is premature because geotechnical activities that appellants previously asserted could not be completed until *after* certification of the DCP must be completed *before* DWR may file the Certification for the DCP. While the DSC previously determined that the 2024-2026 geotechnical activities are not a covered action (DCP.X2.1.00043), a preliminary injunction remained in place when the Certification was filed that prohibited DWR from commencing or completing those activities. In addition, the issue of the timing of submission of the Certification is not an appealable issue. Thus, appeals based on this ground must be denied. Although the remainder of the geotechnical investigations will continue to refine project design, detailed information was still available to effectively inform DWR's Certification, including its DP P2 analysis regarding siting considerations.**[A5-43, A8-18, AS-WS-4]**

2.5.2 Change in Point of Diversion

Issue. Appellants allege that the Certification must be remanded because other operational details of the DCP will be determined by the State Water Resources Control Board (State Water Board) as part of the pending State Water Board Change in Point of Diversion (CPOD) Petition hearing. **[A8-17, A9-17]**

Response: Timing of Submission Relative to Change in Point of Diversion Petition Is Appropriate and Not Appealable. The timing of DWR's submission of the Certification is not an appealable issue. There is no requirement in any Delta Plan policy that a decision by the State Water Board regarding the DWR water rights be made prior to submitting the Certification or the DSC adjudicating appeals. The current operations for the DCP are clearly outlined in DCP Operations Plan (DCP.AA2.1.00006). Regardless, DWR will operate the DCP to meet all applicable permit requirements. **[A8-17, A9-17]**

2.5.3 Time Extension Petition

Issue. Appellant alleges that information from the Petition for Extension of Time should have been included in the Certification, and if the State Water Board grants a Time Extension, that could alter DCP operations. **[A8-12, A8-13, A8-14, A8-15, A8-16, A8-22, A8-28]**

Response: Time Extension Petition and Relevance to the DCP. The Time Extension Petition and DCP have independent utility (DCP.D6.3.00081, p. 3). DWR is requesting a Time Extension to beneficially use the water in the State Water Project (SWP) water right

permits because climate change is causing the need for the SWP to divert more water in wet conditions, whether or not DCP is implemented. The Time Extension Petition does not propose to modify DCP's operational criteria. The DCP FEIR assessed potential effects of full operations of the DCP if a Time Extension is granted; DCP will continue to be subject to operational criteria to avoid or reduce potential impacts. If the State Water Board does not grant a Time Extension, DCP diversions may be less in some wet conditions but there is not a potential for impacts to increase. The FEIR discloses that the DCP, as proposed, will, under certain conditions, allow for diversions that exceed existing conditions. In other words, to be conservative, the FEIR discloses modeled potential future SWP deliveries without limiting operations to historic maximum diversions. Even if DCP was operated consistent with historic maximum diversions, modeling demonstrates that diversions will decline without the DCP. **[A8-12, A8-13, A8-14, A8-15, A8-16, A8-22, A8-28]**

3 Policies

3.1 DP P2 (Respect Local Use When Siting Water or Flood Facilities or Restoring Habitats)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with DP P2 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.1.1 A3—County of Sacramento and SCWA (Policy DP P2)

3.1.1.1 Demonstrating Consistency with DP P2

Issue. Appellant alleges DWR could have done more to further reduce land use conflicts. **[A3-9, A3-64, A3-65, A3-66, A3-67, AS-WS-41, AS-WS-42, AS-WS-44, AS-WS-47, AS-WS-50, AS-WS-53, AS-WS-60]**

Response: Demonstrating Consistency with DP P2. DP P2 requires water management facilities, ecosystem restoration, and flood management infrastructure to be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible. DP P2 "does not require consideration of particular design features that would reduce conflicts with existing uses." (Determination Regarding Appeals of the Revised Certification of Consistency Number C202110 of the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (March 22, 2022) (2022 Determination Regarding C202110) (DCP.AA2.1.00096, p. 22, citing Cal. Code Regs., tit. 23, § 5011(a)).) Similarly, DP P2 does not require consideration of a no project alternative or entirely different projects than the covered action (see *Tulare Lake Basin Water Storage Dist.*

v. Dept. of Water Res. (2025) 115 CalApp.5th 342, 361 (*Tulare Lake*) ["the certification of consistency does not serve as an informational document for use by the decision maker in selecting among project alternatives"]); DP P2 only asks whether the covered action is sited to avoid or reduce conflicts with existing use when feasible (DP P2(a)).

Where land use conflicts exist and a certifying agency determines based on substantial evidence in the record that the "conflicts cannot be avoided altogether, DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible" (DCP.AA2.1.00096, p. 36). Arguments or evidence suggesting that a certifying agency could have done more to further reduce a land use conflict is insufficient to meet appellant's burden because "DP P2 does not specify that to adequately reduce a conflict, the siting of the covered action must maintain all existing qualities of a use, nor does it specify an extent to which conflict must be reduced" (DCP.AA2.1.00096, p. 36). These siting considerations are documented in multiple specific responses in this section. While DWR disagrees with appellant's arguments that DWR could have feasibly further reduced conflicts with existing uses, even those arguments (if accepted) would be insufficient for appellant to prevail. Appellant fails to demonstrate that there is a lack of substantial evidence in the record to support DWR's finding that it "sited [DCP] to avoid or reduce conflicts with existing uses" (DP P2 (a)).

To comply with DP P2 substantial evidence in the record must demonstrate one of the following: (1) conflicts with existing land uses have been avoided, (2) where a land use conflict has not been avoided altogether, the certifying agency has sited the covered action, "considering specific design elements incorporated within the Project" to reduce conflicts (DCP.AA2.1.00096, p. 27), or (3) it is not feasible for the covered action to be sited to avoid or reduce conflicts with existing land uses. Here, substantial evidence in the record demonstrates that, in consideration of specific design elements implemented by DWR, DWR sited the DCP to avoid or reduce conflicts with existing and uses where feasible.

DP P2 also acknowledges that an agency may propose mitigation measures to mitigate potential conflicts with adjacent land uses. However, DP P2 does not require that an agency adopt mitigation to demonstrate consistency with DP P2. While not required to demonstrate consistency with DP P2, where appropriate, the Certification and the responses in this WS discuss mitigation measures that DWR has elected to adopt that illustrate DWR's efforts to address potential conflicts with adjacent land uses. The discussion of mitigation constitutes additional substantial evidence supporting DWR's finding that a project has been sited to avoid or reduce conflicts with existing land uses. **[A3-9, A3-64, A3-65, A3-66, A3-67, AS-WS-41, AS-WS-42, AS-WS-44, AS-WS-47, AS-WS-50, AS-WS-53, AS-WS-60]**

3.1.1.2 Reduction of Conflicts in Siting Intakes Near Hood

Issue. Appellant alleges that the effects of the DCP on Hood were not fully considered, specifically with regard to noise, water supply, and general residential and commercial uses.

Appellant reiterates a concern raised during CPOD hearings regarding the effects of intake construction on the business of the Willow Ballroom in Hood. **[A3-54]**

Response: Intake Siting Considered Existing Uses. Appellant fails to confront the substantial evidence that DWR did consider existing uses in Hood. The *Concept Engineering Report* (CER) (DCP.D4.3.00001, p. 4-5) describes the siting considerations used for selection of candidate intake sites. A suitable intake site, site C-E-4, was not pursued in part because the work area was directly adjacent to Hood; access road development and State Route (SR) 160 regrading was expected to extend into the town (DCP.D4.3.00009, p. B6-3). DWR also analyzed the effects of the DCP on factors such as noise, water supply, residential/commercial uses, and recreation. These analyses are found in FEIR Chapter (Ch.) 24, *Noise and Vibration* (DCP.D1.1.00188); FEIR Ch. 21, *Public Services and Utilities* (DCP.D1.1.00172); FEIR Ch. 14, *Land Use* (DCP.D1.1.00126); and FEIR Ch. 16, *Recreation* (DCP.D1.1.00149), respectively. See also the discussion of the Stakeholder Engagement Committee (SEC) process to minimize effects on local uses Sec. 3.1.1.5, *Public Outreach*, under *Stakeholder Engagement Committee Provided Additional Forum for Outreach and Input*.

Therefore, substantial evidence demonstrates that the siting of DCP will not result in a land use conflict with existing uses in Hood. While the FEIR identifies impacts such as noise, as stated in Sec. 3.1.1.1, *Demonstrating Consistency with DP P2*, the DSC has found that the siting of the covered action is not required to maintain all existing qualities of a use (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-54]**

Response: Though Not Required, Mitigation Measures Will Lessen Environmental Impacts on Hood. DP P2 requires that water management facilities be *sited* to avoid or reduce land use conflicts, when feasible. As explained in the previous response, DWR has sited DCP to avoid land use conflicts in Hood. DP P2 does not require that all environmental impacts be fully mitigated. Appellant also ignores the substantial evidence in the record demonstrating that DWR analyzed the effects of the DCP on Hood and adopted appropriate mitigation measures. Because the intake locations will be sited close to Hood, Intake B (C-E-3) will be about 1 mile upstream of Hood and Intake C (C-E-5) will be over 1 mile south of Hood (DCP.D4.3.00009), DWR identified mitigation measures that will lessen impacts on environmental resources. As explained in Sec. 3.1.1.1, DP P2 does not require mitigation, but the Certification identifies adopted mitigation measures that have the practical effect of avoiding or reducing siting-related conflicts with land uses (DCP.AA1.2.00018, p. 36). These include mitigation measures that broadly reduce conflicts from implementation of the DCP with known existing land uses, including those associated with Hood and its vicinity. Notably, these measures will support and protect groundwater (MM GW-1: *Maintain Groundwater Supplies in Affected Areas* and MM GW-5: *Reduce Potential increases in*

Groundwater Elevations Near Project Intake Facilities), transportation (MM TRANS-1: *Implement Site-Specific Construction Transportation Demand Management Plan and Transportation Management Plan*), noise (MM NOI-1: *Development and Implement a Noise Control Plan*), and aesthetics (MM AES-1a: *Install Visual Barriers between Construction Work Areas and Sensitive Receptors*; MM AES-1b: *Apply Aesthetic Design Treatments to Project Structures*; MM AES-1c: *Implement Best Management Practices in Project Landscaping Plan*; MM AES-4a: *Limit Construction Outside of Daylight Hours Within 0.25 Mile of Residents at the Intakes*; and MM AES-4b: *Minimize Fugitive Light from Portable Sources Used for Construction*) (DCP.C.1.00002).

While DP P2 does not address general economic concerns, in consideration of the effects that construction of the DCP may have on the general economy of Hood, the Community Benefits Program (CBP) is an example of a specific effort DWR is implementing to reduce conflicts with existing land uses when feasible in a manner consistent with DP P2 (DCP.AA1.2.00018, p. 33); this program entails a dedicated $200 million fund to deliver tangible, lasting, and measurable benefits to Delta communities (DCP.D6.3.00074). Regarding appellant's concern about the effect of project construction on the Willow Ballroom and other commercial land uses in Hood, the DCP will not directly convert land uses in the town, and an ombudsman will be available to handle claims for construction-related damages for expedient consideration and resolution (FEIR Ch. 3, *Description of the Proposed Project and Alternatives* (DCP.D1.1.00010, p. 3-163)). **[A3-54]**

Response: Design Refinements Will Further Lessen Impacts on Hood. Although not required to show consistency with DP P2, DWR will continue avoiding or reducing land use conflicts as part of implementation of the DCP MMRP (DCP.C.1.00002). Design refinements are part of the design development process and cannot be fully completed until DWR gains access to all the parcels in the project footprint to conduct construction-related surveys and geotechnical investigations described in the FEIR. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-54]**

3.1.1.3 Compatibility with Harvest Water Program

Issue. Appellant alleges that the DCP would conflict with the Harvest Water Program. **[A3-17, A3-18]**

Response: Covered Action Does Not Conflict with Harvest Water Program. Appellant makes broad, sweeping allegations but does not provide evidence or indicate how the DCP would interfere with implementation of the Harvest Water Program. The discussion of Harvest Water in Sec. 3.1.2.1, *Harvest Water Program,* under *No Conflict with Harvest Water's Goals and Objectives*, demonstrates that the DCP does not conflict with the Harvest Water Program. Additionally, Appellant also does not point to any specific, legally secured ecological outcomes under Harvest Water that would be displaced by the DCP. The existence

of other conservation programs in the Delta does not, by itself, create a conflict under the Delta Plan. In addition, appellant does not identify any Delta Plan policy that gives Harvest Water priority over the DCP or show that the DCP prevents Harvest Water from being implemented. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-17, A3-18]**

3.1.1.4 Compatibility with National Heritage Area Designation

Issue. Appellant alleges that the DCP will interfere with the Delta's 2019 designation as a National Heritage Area (NHA). **[A3-53, A3-63, AS-WS-61, AS-WS-62]**

Response: NHA Designation Is Not a Land Use. This issue is not appealable under DP P2. The NHA designation functions to support historic preservation, natural resource conservation, recreation, heritage tourism, and educational projects through public-private partnerships, but the NHA designation in itself is not a land use. Appellant fails to raise an issue related to potential conflicts with a land use. See also Sec. 3.1.7.4, *Visual Landscape and Built Environment* under *Facilities Sited to Reduce Conflicts with Built Historical Resources*. **[A3-53, A3-63, AS-WS-61, AS-WS-62]**

Response: Covered Action Must Be in the Delta. Even if the NHA designation was a land use, substantial evidence shows that it is infeasible to site the DCP to avoid or reduce this alleged conflict. To achieve the DCP's objectives, consistent with the California Water Resilience Portfolio in a cost-effective manner (DCP.D1.1.00011), the intakes and other associated facilities must be located in the Delta. DWR did screen alternatives that sited intakes upstream of the Delta, north of downtown Sacramento (DCP.D1.1.00011, p. 3A-38). While such intakes would have been outside the legal Delta, compared to the DCP, additional tunnel shafts in the legal Delta would have been required, including near residential and commercial uses close to the communities of West Sacramento, Freeport, Clarksburg, and Hood (DCP.D1.1.00011, p. 3A-38). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[AS-WS-61, AS-WS-62]**

Response: DCP Does Not Interfere with NHA Designation. In addition to this issue fundamentally not being an appealable issue, appellant fails to confront the substantial evidence in the record that the DCP will not conflict with the Delta's NHA designation. To the extent that the DCP could affect specific existing land uses that support the NHA designation, as stated previously under Sec. 3.1.1.1, the DSC has found that "DP P2 does not specify that to adequately reduce a conflict, the siting of the covered action must maintain all existing qualities of a use, nor does it specify an extent to which conflict must be reduced" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). The NHA designation for the Delta is expected to further develop the brand identity of the region and help boost tourism providers and the local tourism economy. The water management facilities of the

DCP are generally sited away and apart from the main tourist areas and will not remove or change the recreation utility of river channels or recreation areas (FEIR Vol. 2, Ch. 4, *Response to Comment Tables*, Table 4-3 (DCP.D1.1.00245, p. 544)). FEIR Ch. 17, *Socioeconomics* (DCP.D1.1.00154), evaluated the recreational experience by recreationists and considered multiple variables, including aesthetics, in the Delta as part of ECON-5. This analysis found that the effects on recreational economics will be minimal, and there were no anticipated effects on employment and labor income related to recreation. While the intakes are sited in the general vicinity of the historic community of Hood, the two intake locations approved by DWR are about 1 mile or more away from Hood and were selected over another feasible site located closer to the town (DCP.D4.3.00009). For more details on how DWR reduced conflicts in the siting of the intakes, see Sec. 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood,* under *Intake Siting Considered Existing Uses*. For an explanation of how DWR sited the DCP to reduce conflicts with historic resources, see Sec. 3.1.7.4, *Visual Landscape and Built Environment*, under *Facilities Sited to Reduce Conflicts with Built Historical Resources*. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-53, A3-63, AS-WS-61, AS-WS-62]**

3.1.1.5 Public Outreach

Issue. Appellant alleges that DWR did not conduct adequate public outreach as part of planning and siting elements of the DCP. Appellant alleges that the scope of the public input during the SEC meetings was too limited. Appellant alleges that DWR ignored evidence in the record from the CPOD hearings. **[A3-52, A3-64, A3-67, AS-WS-49]**

Response: Means for Collecting Comments. Appellant alleges that DWR did not "adequately engage with the conflicts raised by the local agencies." DP P2 does not specify the means by which comments are collected. Rather, it merely states that comments from local agencies and the DPC be considered. For the purposes of the Certification, DWR used the definition of local agencies provided in California Government Code section 54951, in which this term means "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency." The Certification compiles the record of public comments from local agencies and the DPC on the FEIR, which were related to (1) conflicts with an existing land use, (2) analysis of potential conflicts by a project feature and existing land use, (3) recommendations of mitigation to avoid or reduce the land use conflict if necessary, or (4) suggestions to move a project feature to avoid or reduce a conflict with an existing land use (DCP.AA1.2.00018). These comments from the local agencies and the DPC helped to inform DWR of potential conflict mechanisms between the DCP and existing land uses (DCP.AA1.2.00018, p. 53). In addition to responding to comments on the Draft EIR (DEIR), local agency comments provided during the SEC process (see *Stakeholder Engagement Committee Provided Additional Forum for Outreach*

and Input in this section) and the CPOD hearings (see *DWR Considered CPOD Testimony* in this section) were also considered by DWR. The regulatory language of DP P2 does not compel DWR to necessarily change design elements of the DCP in response to those comments, especially if suggestions provided in those comments are determined by DWR to not be feasible. Therefore, the broad claim that DWR did not "adequately engage with the conflicts raised by the local agencies" is not an appealable matter because appellant clearly recognizes in their written submission that DWR did provide evidence in the Certification that summarized how local agency comments were considered. **[A3-52, A3-64, A3-67, AS-WS-49]**

Response: DWR Conducted Early and Extensive Outreach. Allegations regarding the adequacy of public outreach are not only meritless (as explained below) but also have no bearing on whether the Certification is supported by substantial evidence—which is the only question before the DSC.

Although not required for consistency with DP P2, in addition to the SEC meetings, DWR consulted with interested parties and local agencies early and often during the development of the DCP. Some of this engagement included efforts to identify ways to avoid or reduce land use conflicts—including conflicts with agricultural uses, residential uses, wildlife refuges and preserves, and existing infrastructure alignments—where feasible. Extensive outreach efforts included public opportunities for input on siting, as described in Sec. 4.7 of the Certification (DCP.AA1.2.00001) and CER App. I2, *Efforts to Minimize Delta Community Effects* (DCP.D4.3.00045). This effort involved a wide range of interested parties, including the local community, along with local, state, and federal agencies.

As described in FEIR Ch. 35, *Public Involvement*, with the release of the Notice of Preparation (NOP) of an EIR for the DCP, an email notification was sent to 7,320 members of the project mailing list, and letters were sent to federal agencies, responsible and trustee agencies, and community groups on the project mailing list. Letters were also mailed to 155 disadvantaged community representatives (DCP.D1.1.00212, p. 35-1). Through these notices, the public was also made aware of upcoming scoping meetings. DWR conducted eight public scoping meetings throughout California from Feb. to Mar. 2020 (DCP.D1.1.00212). To announce the scoping meetings and encourage public participation, advertisements ran in seven newspapers throughout California, and press releases were distributed to media outlets throughout the state for publication. In addition, multiple email notices were sent to over 500 Delta and Southern California environmental justice organizations to encourage participation in the scoping meetings (DCP.D1.1.00212, p. 35-2).

DWR, as the lead agency, followed the appropriate legal process and complied with CEQA in preparing the DCP EIR. DWR provided all public notices required by law under CEQA in the preparation and publication of the DEIR. DWR ran legal notices in 26 newspapers throughout California, including two Spanish language newspapers (DCP.D1.1.00212, p. 35-

10). DWR also distributed a mailer to property owners residing within a 0.25-mile radius of all project facilities analyzed in the EIR (DCP.D1.1.00212, p. 35-10).

With the release of the DEIR, DWR released a series of five short videos as a guide to the EIR to address the following topics: "Project and Environmental Planning Overview" (DCP.D2.2.00068), "Purpose and Objectives of the Delta Conveyance Project" (DCP.D2.2.00069), "Overview of Draft EIR Contents" (DCP.D2.2.00070), "Resource Chapter Organization" (DCP.D2.2.00071), and "How to Comment on the Draft EIR" (DCP.D2.2.00072).

Additionally, DWR released six explainer videos to provide an overview of the analysis contained in the DEIR for key resources that were of higher interest to the public: "Description of the Proposed Project and Alternatives" (DCP.D2.2.00062), "Water Quality" (DCP.D2.2.00063), "Fish and Aquatic Resources" (DCP.D2.2.00066), "Terrestrial Biological Resources" (DCP.D2.2.00065), "Air Quality and Greenhouse Gases" (DCP.D2.2.00067), and "Tribal Cultural Resources" (DCP.D2.2.00064).

An extensive outreach program provided additional public notice to potentially interested parties, beyond what is required by law. This outreach included distribution of an email to over 11,000 subscribers to the project email list, posting of over 130 flyers and posters in both English and Spanish in high-visibility locations in the Delta, distribution of press releases to media outlets, social media posts, and tabling at community events to help reach disadvantaged communities. **[A3-52]**

Response: DWR Has Made Information Widely Available. Although not required for consistency with DP P2, the 2025 *Commitment to Public Outreach and Engagement* fact sheet provides more information on DWR's outreach efforts (DCP.D6.4.00010). DWR keeps the public updated about its work through a variety of distribution and media avenues, including blogs, eblasts, flyers, social media posts, videos, fact sheets, animations, an email address for inquiries, and a telephone hotline in seven languages. The content provided through these sources covers topics such as regular recaps of work accomplished, upcoming work and associated schedules, and detailed answers to commonly asked questions.

Because internet connections in the Delta are often unreliable, DWR also provided to over 20 libraries in the five Delta counties a detailed mapbook of the proposed tunnel alignments, a binder with printed versions of informational materials (many translated into Spanish and Chinese), and a binder with all the presentations from the SEC meetings. These materials, plus many videos, were also provided on thumb drives. The purpose of providing these materials to local libraries was to ensure the availability of accurate information and engage people in the environmental review process and in other discussions, such as those involving the CBP and the SEC. DWR continues to deliver DCP-related materials to Delta libraries (DCP.D6.3.00016). **[A3-52]**

Response: Stakeholder Engagement Committee Provided Additional Forum for Outreach and Input. Although not required for consistency with DP P2, the SEC provided a forum for interested parties in the Delta to provide feedback on conceptual project designs and ways to minimize the effects of the project buildout on a broad array of considerations. The Delta Conveyance Design and Construction Authority (DCA) engaged in considerable public outreach early in the planning process through the SEC to ensure that elements of the project were sited in a manner to avoid conflicts with local land uses where feasible, such as those related to high-quality farmland. They held 19 meetings from Nov. 2019 to Dec. 2021. The SEC included an application and selection process, with up to 18 committee members representing specific Delta communities or issue areas. The SEC includes representatives of residents of Sacramento, Yolo, San Joaquin, and Contra Costa Counties; Tribal governments; Delta recreation, public safety, local businesses, and community entities; agriculture, Delta history and heritage, fish and wildlife, and Delta water agencies; and ex officio representatives with expertise on public parks, levee engineering, and public safety.

In response to SEC concerns, DCA considered ways to reduce effects on local communities, at the direction of DWR. The Efforts to Minimize Delta Community Effects technical memoranda (TMs) (DCP.D4.1.00063; DCP.D4.1.00112) for the eastern and central and Bethany Reservoir alignments summarize the approach and highlight the results of the activities conducted by DCA to minimize local community effects. **[A3-64]**

Response: DWR Considered CPOD Testimony. As explained in the Certification (DCP.AA1.2.00018, p. 53), CPOD protestant testimony was considered, and it was determined that all the issues raised by the CPOD protestants were within the scope of comments raised during the CEQA process. Appellant fails to identify any specific issues raised during CPOD hearings that were not already raised in DEIR comments. Appellant states that the DCP EIR analysis is "weak," which they allege is supported by CPOD testimony; however, their opinion on the adequacy of the EIR analysis is irrelevant to the scope of a DP P2 appeal. Contrary to appellant's claim, substantial evidence demonstrates that DWR did consider CPOD testimony. **[AS-WS-49]**

3.1.1.6 Alternative Locations Evaluated for Intakes

Issue. Appellant alleges that DWR failed to consider specific downstream intake location sites, such as in the western Delta, since water diversions are planned to occur during periods of high outflow when salinity is less of an issue. Appellant also alleges that DWR relied on information that was over a decade old and failed to consider evolving conditions in the Delta in siting the north Delta intakes. **[A3-64, A3-65, AS-WS-42, AS-WS-45]**

Background and Context. Because no specific areas are designated in the Delta for new water supply infrastructure on the scale of the project, it was ultimately not feasible to site the project's intake facilities in a manner to avoid all potential land use conflicts.

Response: DWR Considered Existing Uses When Identifying Intake Locations. In determining the feasibility of avoiding or reducing land use conflicts, DWR assessed engineering feasibility and environmental concerns and their associated siting constraints as part of the development of the DCP. As documented in the CER, the DCA's overall siting evaluation screening considered: (1) technical feasibility (e.g., verifying river bathymetry and topographic conditions can support an intake and its appurtenant facilities) to ensure the site was even viable (DCP.D4.3.00001, p. 4-6; DCP.D4.3.00009, p. B6-8), (2) fewest occurrences of existing infrastructure and other community resources—including powerlines and water supplies—and complete avoidance of particularly significant infrastructure resources (DCP.D4.3.00045, p. I2-13), (3) proximity to existing structures and communities with preference for sites away from these uses (DCP.D4.3.00009, p. B6-6), (4) avoidance of conflicts with existing habitat preserves and refuges (DCP.D4.3.00045, p. I2-2), and (5) less removal of farmland acreage and structures (DCP.D4.3.00009, p. B6-9; DCP.D4.3.00021, p. C5-9). The DCA's reexamination of the bathymetry and physical setting of the Sacramento River between the community of Freeport and the southern confluence with Sutter Slough did not reveal any additional candidate sites beyond the five intake sites evaluated in the CER (DCP.D4.3.00001, p. 4-6). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-64, AS-WS-45]**

Response: Alternative Intake Locations Either Failed to Meet Project Objectives or Had Greater Impacts. Substantial evidence in the record demonstrates that DWR adequately considered other alternative intake locations and ultimately found that they were infeasible because they either failed to meet project objectives and/or would have greater environmental impacts, such as increased land use conflicts. A3 and the subsequent written submission for A3 fail to cite all the record evidence that supports DWR's finding that other sites were considered but found to be infeasible. While appellant does specifically reference certain elements in the Certification (along with statements submitted during State Water Board hearings made by various parties in opposition to DWR), appellant notably fails to show that the CER and its attachments are not substantial evidence that other sites were infeasible.

The selected sites for the DCP intakes reduced conflicts with existing land uses and land uses described in the Sacramento County general plan in consideration of the project objectives and environmental impacts associated with other alternatives. The CER (DCP.D4.3.00001, p. 4-5) describes the siting considerations used for selection of candidate intake sites so water supply reliability for the state under the SWP would ultimately be improved to contribute toward the achievement of the coequal goals for the Delta and consistent with Ch. 3, *A More Reliable Water Supply for California*, of the Delta Plan. **[AS-WS-45]**

Downstream intake locations (e.g., Sherman Island and other western Delta locations) were considered during the planning process but had greater environmental impacts

(DCP.D4.3.00009). Both delta smelt and longfin smelt are Endangered Species Act (ESA)- and California Endangered Species Act (CESA)-listed species. Per Fish and Game Code, section 2081(b)(2), any take of CESA-listed species must be minimized and fully mitigated. Given this strict standard, it is unrealistic to expect California Department of Fish and Wildlife (CDFW) to issue an incidental take permit (ITP) for smelt species for intakes sites located downstream of Sutter and Steamboat Sloughs when the risk to the species could be feasibly reduced by siting the intakes in the north Delta and upstream of the main smelt population distribution. In consideration of the risk to smelt species, it was determined that north Delta intake locations should be located in the Sacramento River in the reach upstream of the confluence with Sutter Slough (DCP.D4.3.00009). A new diversion facility in the western Delta would also not satisfy the DCP objectives because it would have limited ability to adjust to changes in sea level and resulting increases in salinity (DCP.D1.1.00011, p. 3A-28). Water quality at a west Delta intake could also be more difficult to maintain, as Delta salinity rises in summer and fall. Intakes in the west Delta near Antioch would also be subject to an increased seismic risk due to the proximity of faults near Suisun Bay (DCP.D1.1.00011, p. 3A-32–3A-33). **[AS-WS-42, AS-WS-45]**

New diversions in or near the cities of West Sacramento and Sacramento were also considered; however, these locations would have required additional tunnel shafts and increased environmental impacts relative to the approved DCP design. The additional shafts would likely need to be located close to north Delta communities including West Sacramento, Freeport, Clarksburg, and Hood, leading to other land use conflicts (FEIR App. 3A, *Identification of Water Conveyance Alternatives* (DCP.D1.1.00011, p. 3A-38)). Construction vehicle traffic, noise, and air emissions would also be concentrated in a populated urban area with multiple schools and other sensitive receptors along construction traffic routes and near construction sites (DCP.D1.1.00011, p. 3A-39). Additionally, a West Sacramento intake alternative would have to deal with hazardous materials in the Sacramento Deep Water Ship Channel; would require construction activities within the Yolo Bypass Wildlife Area due to the need to improve Sacramento Deep Water Ship Channel levee; and would conflict with the adopted West Sacramento General Plan. Intake designs at this location would also have the potential to increase navigation hazards and risks of take of listed fish species (DCP.D1.1.00011, p. 3A-39). Thus, substantial evidence in the record supports DWR's finding that it was infeasible to locate the intakes at different locations than those approved by DWR. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-65, AS-WS-45]**

Response: Intake Locations Required Considerations of Many Technical Constraints. The siting of the north Delta intakes upstream and downstream of Hood are the result of nearly two decades of analyses and evaluations (DCP.AA1.2.00018, p. 8). Appellant fails to confront the substantial evidence that siting constraints limited the locations where the north intakes could be placed. These constraints are summarized in DP P2 Att. 1 (DCP.AA1.2.00018, specifically pp. 8–16), and include factors such as bathymetric

conditions, geotechnical factors, construction feasibility, impacts on the built environment, proximity to existing residential and commercial development, and environmental impacts and habitat disruption. Additionally, more details on intake siting considerations and constraints are documented in the CER (DCP.D4.3.00009, pp. B6-8, B6-10–B6-14).

Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. Therefore, appellant has not met their burden to demonstrate that substantial evidence does not support the DWR's DP P2 consistency determination. **[A3-64]**

3.1.1.7 Through-Delta Water Conveyance and Delta Levee Network

Issue. Appellant alleges that to demonstrate consistency with DP P2, DWR should have considered a completely alternative approach to the DCP, such as desalination plant in the western Delta. Additionally, appellant alleges that DWR did not adequately consider reinforcing a through-Delta water conveyance alternative ("freshwater pathway" or "armored pathway") before pursuing the dual conveyance approach of the DCP. **[A3-64, A3-66, A3-67, A3-68, AS-WS-42, AS-WS-43, AS-WS-44, AS-WS-46]**

Background and Context. While not required to demonstrate consistency with DP P2, the FEIR evaluated a large array of alternatives, as summarized in App. 3A (DCP.D1.1.00011). Alternatives considered include those related to improving a through-Delta water conveyance corridor without north Delta intakes as well as desalination in the Delta.

Response: DP P2 Does Not Require Consideration of Alternative Projects. Appellant fails to cite any authority that DP P2 requires consideration of alternatives that entail a completely different project than the DCP. Appellant misrepresents the requirement under DP P2 for the certifying agency to site water management facilities to avoid or reduce conflicts with existing uses when feasible as a requirement to consider alternatives to the DCP that are fundamentally different in nature. (See *Tulare Lake*, *supra*, 115 Cal.App.5th at p. 361.) Appellant alleges that DWR should have pursued a desalination plant in lieu of the proposed north Delta intakes or an alternative that entailed armoring existing Delta levees and not dual conveyance are not appealable issues under DP P2 and should be dismissed. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-64, A3-66, A3-67, AS-WS-42, AS-WS-43, AS-WS-44]**

Response: DWR Considered the Alternative Proposed by Appellant. While not required by DP P2, DWR analyzed a "through-Delta" alternative and determined that it failed to meet multiple fundamental project objectives and therefore was not a feasible approach for the DCP (see *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165 [an EIR need not study an alternative that fails to meet the proposed project's fundamental purpose because such an alternative is infeasible]). The through-Delta conveyance alternative was eliminated during the alternatives screening

process because it failed four key criteria for the DCP: water supply reliability, climate resiliency, seismic resiliency, and operational flexibility. The explanations for why such an alternative would fail to meet each of these criteria are found in the FEIR (DCP.D1.1.00011, pp. 3A-34–3A-35). A project approach that included desalination facilities was also considered but was eliminated from further evaluation because a desalination plant of adequate capacity in the western Delta could be several square miles in size, increasing conflicts with land use, and the desalination process would have resulted in substantial energy use and associated greenhouse gas emissions (DCP.D1.1.00011, p. 3A-16). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-66, A3-68, AS-WS-43, AS-WS-46]**

Response: Levee Improvements Alone Are Inadequate to Improve Water Supply Reliability for All Delta Water Users. Delta levee improvements may be potentially viable separate projects, but levee improvements would not meet the water supply resiliency and reliability objectives for the DCP because they do not address the effect that increasingly restrictive operational criteria, climate change, rising sea levels, and seismic events could have on south Delta facility operations and would not offer additional operational flexibility for conveying water supplies from the Delta. Levee improvements could also result in relatively large surface impacts in and adjacent to levee footprints that could affect Delta waterways and riparian and aquatic habitat. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-68, AS-WS-46]**

3.1.1.8 Siting Criteria for Infrastructure Elements

Issue. Appellant alleges the DCP infrastructure, including tunnel alignment, did not avoid or reduce conflicts with existing uses. Appellant also alleges that DWR did not show it could not have sited the project to avoid or reduce impacts on agricultural groundwater wells and their associated agricultural land uses. Appellant also alleges that the DCP could conflict with Hood's only water supply for its residents and commercial operations and further alleges that DWR did not site facilities to avoid or reduce this conflict. Additionally, appellant alleges that the Certification did not provide evidence that the DCP infrastructure were sited to avoid or reduce conflicts of the DCP with recreation on the Cosumnes River Preserve in response to a Sacramento County comment letter. **[A3-52, A3-53, A3-54, A3-65, A3-67, AS-WS-41, AS-WS-43, AS-WS-47, AS-WS-50, AS-WS-68]**

Response: Siting of Tunnel Avoided and Reduced Land Use Conflicts. Appellant fails to confront the substantial evidence in the record regarding how siting of the tunnel reduced conflicts with existing land uses. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible.

FEIR Ch. 10, *Geology and Seismicity*, Impact GEO-4 (DCP.D1.1.00099) analyzed the potential for tunnel-induced ground settlement and surface structure–related ground settlement. The tunnel's vertical and horizontal alignment will be chosen based on existing and additional geotechnical investigations to avoid conflict and protect existing underground utilities, as described in the Tunnel Excavation and Drive Assessment Technical Memorandum (TM) (DCP.D4.3.00017). In addition, today's state-of-the-art pressurized tunnel boring machines are unlikely to cause surface settlement problems that could affect structures, infrastructure, or wells (FEIR Vol. 2, Ch. 4, Table 4-3 (DCP.D1.1.00245, p. 395)).

Groundwater is not a land use in itself but may support an existing land use such as agriculture (see *Wells Are Not a Land Use* in this section for further discussion). Even assuming groundwater is relevant to a DP P2 siting analysis, then appellant fails to confront the substantial evidence that the tunnel will not affect groundwater elevations. In FEIR Ch. 8, *Groundwater*, DWR analyzes how the physical presence of project facilities such as the tunnel may act as no-flow barriers to subsurface groundwater and thereby result in changes in groundwater elevations. The top of the tunnel will generally be between 100 and 120 feet below ground surface, and the bottom of the tunnel will generally be between 140 and 160 feet below ground surface; this depth corresponds to the upper three layers of the DeltaGW Model. During the model simulation period, as shown in FEIR Table 8-6, there was less than a 5-foot difference in groundwater elevations with the DCP as compared to existing conditions (DCP.D1.1.00060, p. 8-39). The presence of the tunnel is thus not expected to result in a substantial change in groundwater elevations.

Since the tunnel will be underground, it will not affect the availability of flood protection infrastructure in the Delta. The tunnel will not penetrate any existing seepage or cutoff walls providing flood protection for the Delta community (DCP.AA1.2.00018, p. 97; DCP.D4.3.00017, p. C1-3).

The potential for conflicts with the local environment and communities with a conveyance tunnel is reduced. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-52, A3-65, AS-WS-41, AS-WS-47]**

Response: Siting of Launch Shaft Sites, Including the Twin Cities Complex, Reduced Conflicts When Feasible. As documented in CER App. C5, *Shaft Siting Study* (DCP.D4.3.00021), available data were used to determine general launch shaft site areas. Glanville Tract was considered as the potential location for the northern tunnel launch shaft site. CER App. C5 documents the assumptions made for the launch shaft siting evaluation:

- The sites should avoid areas of sensitive habitat, such as wildlife preserves or refuges (DCP.D4.3.00021, p. C5-7).
- The intakes would not serve as launch sites to reduce the overall construction impact at the intakes (DCP.D4.3.00021, p. C5-7).

- Each site must be accessible by at least two modes of transportation (i.e., road, rail, and barge) to support the multiyear construction effort associated with a tunnel drive location. Single-mode access (i.e., road access) was considered only if the capacity of the road could be shown capable of handling all required construction traffic under current conditions or improved as part of the DCP (DCP.D4.3.00021, p. C5-7).

- A site size constraint of 250 to 400 acres—estimated to be large enough for equipment to drill the shaft, cranes and appurtenant items to move equipment into and out of the tunnel shaft, equipment holding areas, and areas to receive, process, and manage the RTM. The tunnel launch shaft site also would include areas for tunnel liner segment storage, aggregate storage, concrete and grout batch plants, electrical substation and electrical building, emergency generator and fuel tank with spill prevention facilities, workshops, offices, water treatment tanks, access roads, conveyor cassettes storage, and reusable tunnel material (RTM) handling (DCP.D4.3.00021, p. C5-7).

Three potential sites (CA-A, CA-B, and CA-C) were developed for the northern launch shaft site: CA-A, south of Lambert Road and west of I-5; CA-B, west of Interstate (I-) 5 and immediately south of Dierssen Road; and CA-C, between I-5 and Franklin Boulevard and bisected by Dierssen Road (DCP.D4.3.00021, p. C5-7). Additionally, DCA also considered potential tunnel launch sites on New Hope Tract, Canal Ranch Tract, and Brack Tract (DCP.D4.3.00021, p. C5-27). Substantial evidence the record supports DWR's finding that construction of a launch shaft site at Site CA-C (which is the site called the "Twin Cities Complex") has fewer potential conflicts with existing uses compared to other prospective sites, mainly because Site CA-C does not contain any identifiable existing structures (compared to Site CA-A, which contains two houses and an additional small structure) and would not be expected to require any relocation of utilities (as compared to Sites CA-A and CA-B, which would require power line relocations). Site CA-C would not likely require relocation of overhead power lines, no water supply wells exist in the site, and no identifiable structures are present; in contrast, at least some of the power lines within Sites CA-A and CA-B would likely need to be relocated and each of these sites contain a water supply well. Site CA-C was also ranked highest among the three options because it would allow the tunnel launch shaft and all appurtenant facilities to be positioned on one site and because of its proximity to the existing UPRR. A sensitivity analysis indicated that Site CA-C remained the highest-ranking site even if rail was removed as a mode of material transport (DCP.D4.3.00021, p. C5-10).

Substantial evidence in the record therefore shows that there was detailed siting analysis to minimize conflicts between siting of the intake shaft and existing uses; thus, appellant has not met their burden to show the record is devoid of substantial evidence supporting DWR's finding that the DCP is consistent with DP P2. **[AS-WS-41, AS-WS-47, AS-WS-50, AS-WS-68]**

Response: Wells Are Not a Land Use. The title of DP P2 is "Respect Local *Land Use* When Siting Water or Flood Facilities or Restoring Habitats" (emphasis added). Wells are infrastructure that support a land use but are not a land use in and of themselves. Thus, appellant fails to raise a DP P2 appealable issue. Furthermore, even if wells were considered an existing land use for the purpose of DP P2, appellant fails to confront the substantial evidence demonstrating that DWR reduced conflicts with wells and associated groundwater resources in siting the DCP facilities. Appellant's claim in their written submission that DWR failed to consider impacts on groundwater reflects their failure to confront the substantial evidence in the record that DWR did indeed analyze the effects of the DCP on groundwater. See Sec. 3.2.1.9, *Impacts on Groundwater Resources in and in the Vicinity of Hood*, regarding the substantial evidence that the DCP will not result in significant local or regional impacts on groundwater resources or quality. **[A3-54, AS-WS-43, AS-WS-50]**

Appellant fails to confront all the substantial evidence provided in the record that the DCP was sited to avoid or minimize impacts on groundwater wells. Impacts on groundwater wells are identified and discussed in FEIR Ch. 8 (DCP.D1.1.00060). DWR adopted MM GW-1 to support and protect groundwater in the Delta counties (DCP.C.1.00002, pp. 3-93–3-94). Per MM GW-1, prior to construction, the location of existing wells will be determined within the anticipated 0.5-mile radius of influence of project sites at which dewatering will occur during construction or maintenance. Based on available information, site investigations, and desk studies, the location of existing wells, depths of the wells, and the depth to groundwater within these wells will be determined. The results of the monitoring will be used to determine whether supplemental reinjection and/or extraction wells are needed to maintain groundwater supplies in affected areas. For wells that may be affected by groundwater level declines, DWR will reinject groundwater using injection wells and, as needed, potable supplies will be brought in temporarily while injection wells are constructed and the groundwater basin recharges; if injections wells are not feasible or not sufficient to offset impacts, DWR will deepen or modify (e.g., lower pump intakes) wells used for domestic supplies and bring potable supplies temporarily if needed as wells are modified (DCP.C.1.00002, p. 3-94). Furthermore, per MM AG-3: *Replacement or Relocation of Affected Infrastructure Supporting Agricultural Properties* DWR will consult with the neighboring landowners and agricultural operators so that construction of the project facilities adequately avoids the impact on agricultural infrastructure (e.g., groundwater wells) servicing their properties through a redesign of local project design element; if avoidance is not feasible, DWR will implement either of the following options: (a) provide new water wells until diversion connection is reestablished; or (b) relocate and/or replace wells, pipelines, power lines, drainage systems and other infrastructure that are needed to support ongoing agricultural uses (DCP.C.1.00002, p. 3-8). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-53, A3-54, AS-WS-50]**

Response: DWR Considered Sacramento County Comments on Cosumnes River Preserve. Appellant fails to confront the substantial evidence that the DCP will not conflict with the land use designations for the Cosumnes River Preserve or Stone Lakes National Wildlife Refuge (NWR), which are agriculture and open space. During the planning process for the DCP, Sacramento County commented that the Twin Cities Complex shaft site and RTM stockpile area are close to the Cosumnes River Preserve and Stone Lakes NWR. As described in DP P2 Att. 1 (DCP.AA1.2.00018, Table 3), all comments by Sacramento County, including those related to the Cosumnes River Preserve, were considered by DWR. As analyzed in FEIR Impact REC-1: *Increase the Use of Existing Neighborhood and Regional Parks or Other Recreational Facilities Such That Substantial Physical Deterioration of the Facility Would Occur or Be Accelerated*, none of the project alternatives would likely lead to any noticeable decrease in use of recreation facilities in and around the Delta or in neighboring communities, including the Stone Lakes NWR and Cosumnes River Preserve. As described in CER App. C5 (DCP.D4.3.00021), factors that were considered in shaft siting included whether a site is within, or contains within it, protected conservation land, refuges, and preserves. Sites that were on protected conservation land were ranked less favorably than sites that contained little to no conservation land. The Stone Lakes NWR and Cosumnes River Preserve are large areas, and there are preserve parcels near the DCP facilities, but the Twin Cities Complex is not located within either preserve. While not required to show consistency with DP P2, FEIR Ch. 16 (DCP.D1.1.00149) Impact REC-1 analyzed potential impacts on the Cosumnes River Preserve and its current uses (and others nearby) and found that construction impacts, with the ECs and best management practices that will minimize dust and reduce noise-related effects, will be less than significant. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-67]**

3.1.1.9 Sensitive Species Habitat

Issue. Appellant alleges the DCP would affect wildlife, such as migratory birds, due to the siting of facilities in proximity to the Cosumnes River Preserve and Stone Lakes NWR. To support their claim, appellant alleges during construction of the SR 99 bridge near Dillard Road in 2019, nesting activity of egrets, herons, and cormorants at the Cosumnes River Preserve Horseshoe Lake property near Dillard Road declined. Appellant alleges that DWR did not provide reduction or avoidance measured related to impacts on wildlife. **[A3-59, A3-61, AS-WS-8, AS-WS-55, AS-WS-57, AS-WS-58, AS-WS-59]**

Response: Siting Considerations Included Avoiding or Reducing Conflicts with Special-Status Species Habitat When Feasible. Special-status species habitat in itself is not a land use, but rather a resource supported by an existing land use, such as open space, conservation, or agriculture. Even assuming special-status species habitat is relevant to a DP P2 siting analysis, appellant fails to confront the substantial evidence in the record that DWR avoided or reduced conflicts with special-status species habitat during the siting process. The

example of an unrelated project on Dillard Road does not address the substantial evidence in the record that effects on special-status bird habitat will be avoided. The siting evaluation screening items for the overall project considered proximity to areas with habitat for wildlife and minimizing disturbance to sensitive wildlife (DCP.D4.3.00001, p. 2-2). Additionally, see Sec. 3.1.1.1, which explains that evidence suggesting that a certifying agency could have done more to further reduce a land use conflict is insufficient to meet appellant's burden (DCP.AA2.1.00096). The project design objectives are also intended to minimize construction traffic and associated effects to wildlife habitat (DCP.D4.3.00045, p. I2-2). Table 1 of the Efforts to Minimize Delta Community Effects TM includes a summary of the types of methods that were identified to minimize effects on Delta habitat during construction and operation of the DCP (DCP.D4.3.00045, p. I2-2). For example, DCA sited an intake haul road to the west of a railroad embankment adjacent to Stone Lakes NWR to minimize disturbance to this refuge. A tunnel shaft was also relocated from Brack Tract to Canal Ranch Tract to minimize disturbance along flight paths of greater sandhill cranes and other birds between units of the Woodbridge Ecological Reserve (DCP.D4.3.00045, p. I2-16). To minimize disturbance to wildlife and the Stone Lakes NWR, no construction traffic will be allowed on Hood-Franklin Road except employee shuttle buses and small pickup and utility trucks (DCP.D4.3.00045, p. I2-5). Potential intake locations are all located along the Sacramento River near riparian habitat; however, in siting of the intake locations, DWR preserved riparian habitat whenever possible and minimized impacts on special-status terrestrial species and high-value habitats; Tables 1 and 2 of the Intake Site Identification and Evaluation TM compares the potential effects on habitat and sensitive wildlife species of five prospective intake sites (DCP.D4.3.00009).

As demonstrated in FEIR Vol. 1 and discussed further in responses to comments in FEIR Vol. 2, the DCP effects on fish and aquatic resources and terrestrial biological resources have been mitigated to a less-than-significant level (DCP.D1.1.00104; DCP.D1.1.00112). Since it was not feasible for all such conflicts with special-status species habitats to be avoided (e.g., intakes require work in the Sacramento River and thus siting of facilities fully outside habitat for sensitive species was infeasible), the Compensatory Mitigation Plan (CMP) was developed to restore or protect suitable habitat for these terrestrial and aquatic species as well as aquatic resources. FEIR App. 3F, *Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources*, Table 3F-1 summarizes the aquatic and species resource types addressed by the CMP, including Crotch bumble bee, giant garter snake, burrowing owl, greater sandhill crane, least Bell's vireo, tricolored blackbird, Swainson's hawk, valley elderberry longhorn beetle, western yellow-billed cuckoo, winter-run and spring-run Chinook salmon, delta smelt, longfin smelt, and others. Aquatic resource types addressed by the CMP include forested and scrub-shrub wetland, emergent wetland, seasonal wetland, vernal pool, and others (DCP.D1.1.00017, p. 3F-4–3F-5). The CMP identifies specific performance standards and associated requirements for monitoring of mitigation sites to track whether

they achieve performance standards to serve as mitigation for impacts on terrestrial and aquatic biological resources (DCP.D1.1.00017, p. 3F-80). **[A3-59, AS-WS-8, AS-WS-55]**

The Stone Lakes NWR and Cosumnes River Preserve are large areas, and while there are preserve parcels near DCP facilities, no DCP facilities will be located in either preserve. Sec. 3.1.1.8, *Siting Criteria for Instructure Elements*, shows that the DCP facilities were sited to avoid or reduce land use conflicts, including conflicts with open space for sensitive species, when feasible. While not required to show consistency with DP P2, which is focused solely on siting, reasonably foreseeable impacts on wildlife were analyzed in the FEIR, such as effects from construction noise. Appellant's claim that DWR did not provide any reduction or avoidance measures related to impacts on wildlife fails to confront the substantial evidence in the record. Mitigation measures identified for terrestrial biological resources are summarized in Sec. 3.3, *G P1 (b)(2) (Mitigation Measures)*. As explained in Sec. 3.1.1.1, DWR is not required to adopt mitigation to demonstrate consistency with DP P2 but this WS discusses mitigation measures that reduce potential conflicts with adjacent land uses. For example, regarding minimizing impacts on greater and lesser sandhill cranes within Stone Lakes NWR and Cosumnes River Preserve, MM BIO-33: *Avoid and Minimize Disturbance of Sandhill Cranes*, will limit construction activities such as pile driving, road construction, helicopter surveys, and geotechnical investigations so that no new sources of noise or other major disturbance that could affect sandhill cranes will be introduced after the cranes arrive at their wintering grounds. Other substantial evidence of DWR's efforts to avoid or minimize effects on species habitat is documented in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), which identifies applicable ECs, mitigation measures, and CMP measures related to sensitive natural communities, including wetlands and riparian habitat and special-status species habitat. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-59, A3-61, AS-WS-55, AS-WS-57, AS-WS-58, AS-WS-59]**

3.1.1.10 Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible

Issue. Appellant alleges that DWR did not site facilities to avoid or reduce conflicts related to conversion of Important Farmland associated with the intakes. Appellant also alleges that coordination with remnant farmland owners does not demonstrate avoidance or reducing conflicts with farmland. **[A3-52, A3-53, A3-70, AS-WS-50, AS-WS-51]**

Response: Effects on Agricultural Properties Were a Factor in Siting, Including the North Delta Intakes. The general siting evaluation for the DCP included extent of disturbance due to removal of farmland acreage and structures. In the pre-planning stage, DWR also had to take engineering feasibility and environmental concerns into consideration for siting decisions, meaning that it is not possible to both implement the project and avoid potential conflicts with all existing land uses, such as active farmland. Due to the nature of the project, avoidance of agricultural land was not feasible because of the prevalence of

farmland uses adjacent to Delta channels such as the Sacramento River. While the sites for placement of the two intakes have been identified and approved by DWR, future design refinements for the project as part of commitments in mitigation measures included in the MMRP (DCP.C.1.00002) include the potential for shifts in configuration of the intake infrastructure to avoid infrastructure supporting agricultural properties. As explained in Sec. 3.1.1.1, DWR is not required to adopt mitigation to demonstrate consistency with DP P2 but this WS discusses mitigation measures that reduce potential conflicts with adjacent land uses. Furthermore, one of the reasons certain intake sites considered by DCA, such as Site C-E-1, were dropped from further consideration during project planning was because it would have affected more agricultural and residential properties compared to other prospective intake sites evaluated. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with farmland when feasible. **[A3-52, A3-53]**

Response: While Not Required to Show Consistency with DP P2, DWR Committed to Implementing Agricultural Resources Mitigation to Offset Any Permanently Converted Farmland by Protecting Other Farmland in Delta Counties. As explained in Sec. 3.1.1.1, DWR is not required to adopt mitigation to demonstrate consistency with DP P2, but this WS discusses mitigation measures that DWR has adopted that reduce potential conflicts with adjacent land uses. FEIR Vol. 2, Ch. 3, *Common Responses*, Common Response 12, *Agricultural Resources* (DCP.D1.1.00233), explains the effectiveness of the mitigation for agricultural resources identified by DWR in the MMRP. Under MM AG-1: *Preserve Agricultural Land*, DWR will achieve a minimum of 1:1 acreage ratio to directly offset the areas of agricultural land taken out of production as a result of construction of the DCP. The 1:1 ratio prioritizes the land to be protected under easements is of equivalent or better quality to the corresponding farmland taken out of production. These agricultural easements are to be acquired near the locations of impacts on agricultural land to ensure long-term viability of agriculture in the Delta counties (i.e., Alameda, Contra Costa, Sacramento, San Joaquin, Solano, and Yolo). DWR considered various factors to evaluate whether future prospective mitigation areas provide an equivalent quality of farmland as the farmland to be permanently converted (i.e., "like for like"). While it is not possible to completely replicate all facets of the particular farmland property targeted for conversion, to extent possible, DWR intends to ensure protection of farmland of generally similar qualities, particularly those farmland properties providing the highest level of agricultural productivity. DWR will consider the following factors during implementation: Important Farmland status, soil quality, vulnerability to development (i.e., agricultural areas that are threatened with a change to a nonagricultural uses, such as urban development and certain types of habitat restoration), and location (DWR will endeavor to site mitigation for converted Delta farmland to areas within the legal Delta whenever possible—to the extent participating landowners are willing). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-53, AS-WS-50]**

Response: While Not Required to Show Consistency with DP P2, Potential Effects of Fragmenting Farmland Considered. As described in App. 15B, *Agricultural and Land Stewardship Considerations* (DCP.D1.1.00135), one approach to minimize affected farmland was to acquire only the portion of the farmland parcel needed to support the DCP. The remaining areas of farmland within a parcel not used by the DCP are referred to as remnant farmland. DWR will coordinate with remanent farmland landowners to determine the best use of these areas. Potentially, such remnant farmland could be maintained in agriculture (e.g., they could be leased to hobby farmers interested in managing small acreages of land); however, such an outcome cannot be assured. Ultimately, DWR can only coordinate with landowners and not compel them to continue farming remnant farmland. DWR conservatively assumed that individual remnant farmland less than 20 contiguous acres will not be maintained in agriculture following the construction of the DCP and therefore will be subject to the mitigation requirements described in MM AG-1 (DCP.D1.1.00133, p. 15-39). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-70, AS-WS-51]**

3.1.1.11 General Plan Versus Existing Use Analysis

Issue. Appellant alleges that DP P2 requires that the Certification analyze both existing uses as well as planned uses designated in city and county general plans. Appellant alleges the Certification did not adequately demonstrate how DWR sited DCP facilities to avoid or reduce conflicts with land use designations in general plans. Appellant alleges that DWR is in conflict with general plan policies restricting development of Important Farmland. **[A3-9, A3-69, AS-WS-48, AS-WS-50]**

Response: General Plan Consistency Is Not Required. Consistency with general plans is not an appealable issue. DP P2 neither requires documentation of consistency with county general plan policies or future planned land uses, nor does it specify that land use conflicts must be avoided or reduced through compliance with methods described in a general plan policy (Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for California WaterFix (C20185) (DCP.AA2.7.00005, p. 134)). Nonetheless, DWR considered general plan land use designations to demonstrate full disclosure. As none of the general plans designate public water supply infrastructure as a land use at or in the vicinity of any DCP facilities, substantial evidence supports DWR's finding that it was infeasible to site DCP facilities to avoid existing designated land uses. **[A3-9, AS-WS-48, AS-WS-50]**

Response: Options for Assessing Land Use Conflicts. The language of DP P2 effectively allows for two approaches for evaluation consistency with the policy: (1) consideration of existing uses or (2) consideration of uses depicted in general plans. Under either approach, the certifying agency must consider comments from local agencies and the DPC in the identification of potential conflicts with existing land uses. Aside from the DPC, DP P2 does not require consideration of other state agencies' comments, nor does it require consistency

with the policies of any agency's general plan. To accurately capture the range of existing land uses that may not be identified in existing local agency general plans, DWR elected to primarily follow the first approach of considering existing land uses. Although not required, DWR has also included additional consideration of land uses designated in general plans in Sec. 2.2 of DP P2 Att. 1 (DCP.AA1.2.00018). For situations where DWR acknowledges that the DCP could have a conflict with an existing land use, the existing land use conflicts analysis explains how those conflicts were reduced through project siting as well as related mitigation, ECs, or both when applicable. **[A3-9, AS-WS-48]**

Response: General Plan Conflicts Were Analyzed. Appellant alleges that DWR did not analyze uses depicted in general plans, however, appellant fails to address the substantial evidence that DWR indeed analyzed these uses in the FEIR and in the Certification. To determine the potential acreages of land uses affected, a base map of designated land uses within the study area for the DCP was generated from an aggregate of generalized land use designations used in county general plans. Although general plan land use designation nomenclature varies between agencies (e.g., agriculture versus agricultural lands versus agricultural cropland), within each generalized land use category the overall land uses remain largely consistent between agencies. Each county classifies land use differently, and land uses have been grouped together in the seven categories presented in the Alternative 5 section of Table 14-4 in FEIR Ch. 14 (DCP.D1.1.00126, p. 14-28). These categories are agriculture, commercial, industrial, open space, public/semi-public, recreation, and residential. The configuration of project facilities with these land use designation categories is mapped in FEIR Mapbook 14-3 (DCP.D1.1.00131). **[A3-69, AS-WS-48]**

Appellant also alleges that DWR's analysis did not explain how facilities were cited to avoid or reduce conflicts in relation to general plan land use designations. This claim also fails to address the substantial evidence. The consideration of general plan land use maps in the FEIR shows much of the land in the Delta, including in Sacramento County, is designated as agriculture (DCP.D1.1.00133, p. 15-14). The Certification recognizes that the DCP is sited in areas mainly designated in general plans as agriculture and that placement of water infrastructure facilities pursuant to the project is inconsistent with agriculture land use designations; the siting of facilities in agricultural land was unavoidable because the Delta is predominantly agriculture and there are no specific areas designated for water supply infrastructure on the scale of the project (DCP.AA1.2.00018, pp. 4–5). Appellant's allegation that DWR did not consider means to avoid or minimize conflicts with general plan land use designations (e.g., agriculture) fails to confront all the substantial evidence in the record supporting DWR's Certification; see Sec. 3.1.1.10 for how conflicts with conversion of agricultural land were reduced. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-69, AS-WS-48]**

3.1.1.12 Recreational Opportunities in the Delta

Issue. Appellant alleges that DWR failed to site the DCP in a manner to avoid affecting existing recreational opportunities in the Delta, including indirect effects from increased noise and alterations to the visual landscape. Appellant alleges that the DCP could affect wildlife viewing recreational opportunities in the Cosumnes River Preserve and Stone Lakes NWR. Appellant alleges that effects on agritourism were not meaningfully considered since agricultural operations that contribute to Delta's agritourism will be affected by construction. **[A3-58, A3-61, AS-WS-54, AS-WS-55, AS-WS-57, AS-WS-58, AS-WS-59, AS-WS-60]**

Response: Potential Conflicts with Recreational Uses Were Considered During Early Project Planning. Appellant alleges the siting of project facilities, particularly the Twin Cities Complex, conflicts with recreation, especially the Cosumnes River Preserve and Stone Lakes NWR. Appellant fails to confront all the substantial evidence that the DCP was sited to avoid or minimize impacts on land uses supporting recreation. See FEIR Ch. 16 (DCP.D1.1.00149), specifically Sec. 16.1.1.1, *Description of Existing Conditions in the Study Area*, for a detailed description of existing conditions in the potentially affected recreation areas of the Delta. See Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*, under *Siting of Launch Shaft Sites, Including the Twin Cities Complex, Reduced Conflicts When Feasible,* which describes how DWR sited the Twin Cities Complex to reduce conflicts with existing land uses. The Twin Cities Complex is separated from sensitive environmental areas related to the Stone Lakes NWR by I-5 and from ponds related to the Cosumnes River Preserve by over 1 mile (DCP.D4.3.00001, p. 5-3). The intake sites are separated from the Stone Lakes NWR by an abandoned railroad embankment which rises approximately 20 feet above ground level (DCP.D1.1.00112, p. 13-274). Additionally, as documented in CER App. I2, DCA identified various design objectives to minimize conflicts with the Delta community, including minimizing construction traffic and associated effects to recreationists, and minimizing effects to Delta water-based recreation and navigation (DCP.D4.3.00045, p. I2-2). Conceptual designs which were modified in response to Delta interested party input include removal of barge landings to reduce effects on Delta recreational boaters (DCP.D4.3.00045, p. I2-4). Additionally, use of barges in general will be limited to minimize the potential effects on Delta water-based recreation (DCP.D4.3.00045, p. I2-17). Other considerations made by DCA included reducing construction-related traffic loading on Hood-Franklin Road to minimize conflicts with Stone Lakes NWR visitor center and lands, since that is a major recreational use within the Delta (DCP.D4.3.00045, p. I2-5). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-58, AS-WS-54, AS-WS-57]**

Response: Mitigation Measures Protect Recreation Related to Sandhill Crane Viewing. While DP P2 does not require mitigation of land use conflicts, see Sec. 3.3, *G P1 (b)(2) (Mitigation Measures)*, which identified relevant measures to protect recreational activities

near Stone Lakes NWR and Cosumnes River Preserve pertaining to sandhill crane viewing. One relevant measure is MM BIO-33, which will minimize impacts on greater and lesser sandhill cranes during their wintering season at the Stone Lakes NWR and Cosumnes River Preserve by limiting construction activities and enhancing foraging habitat by means of unharvested corn fields to maximize food availability to sandhill cranes. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-58, A3-61, AS-WS-54, AS-WS-55, AS-WS-57, AS-WS-58, AS-WS-59]**

Response: DWR Considered Effects on Agritourism, Such as Wineries. Appellant fails to confront the substantial evidence that DWR avoided or reduced effects on conflicts with agritourism and specifically wineries when siting project facilities. Effects on tourism in Clarksburg (e.g., agritourism associated with Blossom Vineyards Winery) were considered in FEIR Ch. 17 (DCP.D1.1.00154, p. 17-72) because the town is known for both its wine growers and for its multiple wineries (DCP.D1.1.00154, p. 17-7). Even though the intakes will be located on the opposite bank from Clarksburg, the consideration of whether the intakes would be visible from the town was considered during the intake site evaluation process. Similarly, intake locations that were closer to Scribner's Bend Winery (commercial vineyard and wedding venue) were ranked lower in the siting process (DCP.D4.3.00009, p. B6-10). Because construction activities will not generally occur on weekends and most tourism activities occur on weekends, DWR determined that conflicts with tourism will be minimal (DCP.D1.1.00154, p. 17-71). Appellant also alleges DWR failed to consider how farms and agricultural operations that contribute to agritourism will be affected. This claim by appellant fails to confront the substantial evidence compiled by DWR. See Sec. 3.1.1.10 for substantial evidence that DWR sited DCP facilities to reduce conflicts with farmland and minimize conversion. Furthermore, DWR did consider the effects of the DCP on agricultural economics. Under the DCP, the total loss in value of production specifically associated with orchard and vineyards under the DCP is $2.9 million per year during the construction period relative to a 2020 baseline (DCP.D1.1.00154, Table 17-26); the declines in crop production and acreage are less than 1% relative to existing conditions in the statutory Delta (and surrounding parts of the project area). The Delta will continue to remain predominantly agriculture. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible**.** **[AS-WS-60]**

3.1.1.13 Traffic

Issue. Appellant alleges that increased traffic as a result of implementation of the DCP could deter people from visiting the region. Appellant also alleges that increased traffic during the harvest period could cause delays for Delta farmers bringing their crops to market, with such delays potentially causing financial damages due to reduced quality or loss of crop harvest. **[A3-53, A3-62, AS-WS-52]**

Response: Traffic Is Not a Land Use. Traffic in itself is not a land use. Even if traffic volumes increase, appellant fails to raise a valid DP P2 issue related to a conflict with a land use. Thus, their appeal on this matter should be dismissed. **[AS-WS-52]**

Response: While Not Required by DP P2, Mitigation Reduces or Avoids Traffic-Related Effects. Impacts on transportation are identified and discussed in FEIR Ch. 20, *Transportation* (DCP.D1.1.00168). As explained in Sec. 3.1.1.1, DP P2 does not require that DWR adopt mitigation to demonstrate consistency with DP P2, but applicable measures demonstrate DWR's effort to reduce conflicts with adjacent land uses. DWR has adopted measures that will support and protect transportation in the Delta counties by implementing MM TRANS-1 (DCP.C.1.00002, pp. 3-107–3-110). This mitigation measure effectively functions to reduce or avoid potential conflicts with existing land uses affected by changes in traffic volumes from DCP implementation, such as local commerce and Delta tourism (DCP.AA1.2.00018, pp. 39–40). Per FEIR Ch. 20 (DCP.D1.1.00168), MM TRANS-1, DWR is required to implement specific transportation management actions to reduce construction traffic. Per MM NOI-1, off-site haul truck trips on local roads will be limited to the hours between 7:00 a.m. and 7:00 p.m., except for 24-hour concrete deliveries during construction pours (DCP.C.1.00002, pp. 3-96–3-97). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A3-53, AS-WS-52]**

Response: While Not Required by DP P2, Certain Delta Roadway Segments to Be Improved. In terms of site-specific, truck-related impacts, DWR will conduct preconstruction pavement analysis of access roadway segments (including the Delta areas of Sacramento County) and determine the need to improve these access roads. Improvements may include pavement remediation (e.g., fill potholes, asphalt cracking, and slurry seals), road widening (minimum of 12 feet), and other roadway design options to serve construction traffic. After completion of a project site construction, the condition of the access roads for each construction site will be analyzed and remediation of roadways will be completed as needed to return the facility to the improved conditions that were constructed by DWR. In addition, the FEIR anticipated repaving of some roads during construction due to the heavy projected truck traffic (EC-4a: *Develop and Implement Erosion and Sediment Control Plans* requires that paved areas damaged by construction activities be repaved (DCP.C.1.00002, p. 3-118)). A combination of transportation management plans (described in MM TRANS-1) and improvements to the transportation system will be developed in coordination with the County's Department of Transportation to reduce potential traffic safety hazards at key intersections and effects on emergency access to Delta communities in Sacramento County (FEIR Vol. 2, Ch. 4, Table 4-3 (DCP.D1.1.00245, p. 664)). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-62, AS-WS-52]**

Response: While Not Required by DP P2, Factors to Reduce Construction-Related Traffic Implemented During Early Planning and Design. Construction traffic will be limited to designated construction routes and will reduce conflicts with efforts to maintain flood protection by combining with measures (e.g., park-and-ride lots) to reduce employee trips on roadways to construction sites. Additionally, in response to SEC input, the project design avoids use of levee roads for heavy construction to reduce potential impacts on levees (DCP.D4.3.00045, p. I2-4).

To minimize traffic on the local Delta roadways (specifically on SR 160) and to minimize the land requirements and footprint of materials storage areas at the individual intake sites, dedicated construction support facilities (e.g., the off-site concrete batch plants) and new project-specific access roads will be incorporated into the DCP (DCP.D4.3.00001, p. 7-7).

Screening criteria for assessing intake site suitability included proximity to existing development (including the legacy towns), number of structures and residences within the permanent footprint, and potential impacts from construction traffic and new roads and road improvements. Refer to the Intake Site Identification and Evaluation TM (DCP.D4.3.00009) for detailed information on-site selection criteria. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A3-53]**

3.1.1.14 Visual Landscape

Issue. Appellant alleges that the RTM stockpiles will have a detrimental visual impact on the Delta landscape, including on visitors to the Cosumnes River Preserve. **[A3-60, AS-WS-56]**

Response: Visual Resources Not Land Uses. DP P2 only requires consideration of conflicts with land uses. Therefore, the allegation that the RTM stockpiles will have a detrimental impact on the visual landscape is not a DP P2 appealable issue.

Even if visual resources were considered an existing land use for the purpose of DP P2, appellant fails to confront all the substantial evidence showing that DWR reduced conflicts with visual resources when feasible in siting the RTM stockpiles. The FEIR conducted a detailed analysis of the effects of implementation of the DCP of visual resources in the Delta, including those specifically affected by permanent RTM stockpiles. The tables in FEIR App. 18D, *Permanent Impacts After Construction Is Complete* (DCP.D1.1.00160), describe existing visual characteristics and related permanent impacts of the project on visual quality and character, and scenic roadways, as well as impacts from light and glare sources after construction is complete. App. 18D also identifies the overall viewer sensitivity level, the visual dominance of the features, and the project's overall impact from the standpoint of noticeability in the landscape from affected viewing locations that will be affected by permanent features (DCP.D1.1.00160). All RTM areas will be seeded with native grasses. The FEIR recognizes that permanent RTM stockpiles will be visually discordant with the area's existing forms, patterns, colors, and textures associated with the existing agrarian

character. The FEIR Ch. 18 analysis states that Twin Cities Complex, including associated permanent RTM stockpiles, will reduce visual quality from moderately high to moderate (DCP.D1.1.00156, pp. 18-57–18-58). While mitigation measures are not required to demonstrate consistency with DP P2, applicable measures adopted by DWR which reduce conflicts with adjacent lands uses are discussed in this WS. For impacts on aesthetics and visual resources identified and discussed in FEIR Ch. 18, DWR has adopted measures that will support and protect aesthetics and visual resources in the Delta counties by implementing five specific mitigation measures. For example, per MM AES-1a, DWR will install temporary visual barriers at construction work areas with direct line-of-sight with sensitive receptors, such as those that may be located within the Cosumnes River Preserve (DCP.D1.1.00156, p. 18-95). This substantial evidence of DWR's efforts to avoid or minimize effects on aesthetics and visual resources is more specifically documented in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020). In conclusion, appellant's concerns about visual impacts of the RTM stockpiles at the Twin Cities Complex are insufficient to meet their burden that substantial evidence does not support DWR's findings of DP P2 consistency in siting DCP facilities. **[A3-60, AS-WS-56]**

3.1.2 A6—Sacramento Area Sewer District (Policy DP P2)

See the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*; Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*; Sec. 3.1.1.11, *General Plan Versus Existing Use Analysis*; and Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network*. **[A6-9, A6-69, A6-70, A6-73, A6-74]**

3.1.2.1 Harvest Water Program

Issue. Appellant alleges that the siting of the Twin Cities Complex under the DCP could conflict with future implementation of the Harvest Water Program because the complex is located within a portion of the Program's EcoPlan benefit area, and reductions in local irrigation demands within the footprint of the Twin Cities Complex would reduce the amount of claimed in-lieu groundwater recharge. Appellant also raises the concern that construction of the DCP facilities may interfere with pipelines installed as part of the Harvest Water Program.

Appellant also alleges that DWR did not adequately consider the effects of the DCP on groundwater zones and related impacts on groundwater-dependent ecosystems. Groundwater-dependent ecosystems are ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface. They are typically found proximate to surface waters and would be affected similarly to interconnected surface waters.

Additionally, appellant alleges DWR did not consider comments from local agencies and the DPC. **[A6-9**, **A6-11, A6-38, A6-42, A6-43, A6-48, A6-62, A6-63, A6-66, A6-67, A6-75, AS-WS-27, AS-WS-28, AS-WS-63, AS-WS-69, AS-WS-70, AS-WS-76, AS-WS-77]**

Context. Many of appellant's allegations regarding groundwater, pipelines, and Sandhill Crane habitat are premised on the assumption that the Harvest Water Program includes site-specific land use or ecological commitments directly tied to Twin Cities Complex. As explained in this section, the administrative record does not establish any parcel-level permits, executed participation agreements, or site-specific ecological plans or analysis tying Harvest Water implementation to the Twin Cities Complex location. This context informs how the following responses are organized and addressed. **[AS-WS-70]**

Response: No Conflict with Harvest Water's Goals and Objectives. First, Harvest Water is currently under construction and thereby was not an existing land use at the time of Certification for the DCP, nor had it established any site-specificity tying it to the Twin Cities Complex, so this is not an appealable issue under DP P2. Nonetheless, DWR considered the Harvest Water Program in its DP P2 analysis, even though it was not required given the absence of any site-specific Harvest Water land use or planning designation at the project site.

Second, DWR has not been made aware that the parcels located at the Twin Cities Complex site have been issued a Recycled Water Use Permit or are otherwise identified through executed participation agreements, parcel-level approvals, or site-specific planning documents to participate in the Harvest Water Program and therefore cannot confirm the existence of any asserted potential future conflict at this specified location. While the record includes evidence of pipeline alignments and Harvest Water Program construction activity in the vicinity of the Twin Cities Complex, the record does not establish site-specific land use or ecological planning that ties Harvest Water implementation to the Twin Cities Complex as a required or committed location for Harvest Water implementation (DCP.D3.2.00704; DCP.V2.27.00022). Such materials reflect preliminary, voluntary, and nonbinding aspects of program planning rather than parcel-level approvals or land use commitments at the Twin Cities Complex site (DCP.D3.2.00704).

Third, Harvest Water activities would only be undertaken with willing landowners, and the program does not restrict land use decisions in the area if and when DWR acquires the parcels for the Twin Cities Complex. Harvest Water planning materials and testimony in the record describe a program-level framework intended to guide future implementation across a broad service area, rather than identifying or designating the Twin Cities Complex as a site-specific location for Harvest Water Program implementation (DCP.D3.2.00704; DCP.V2.27.00003; DCP.V2.27.00022). The Twin Cities Complex will occupy 586 acres (with 222 acres being permanent) of the Harvest Water delivery area, which is approximately 22,000 acres (FEIR Vol. 2, Ch. 4 (DCP.D1.1.00247, p. 1118)), and will not conflict with SacSewer providing recycled water to other landowners.

This program-level framing is reflected in the Harvest Water Conceptual Ecological Plan, which identifies potential ecological benefits across a broad geographic area and multiple potential locations, rather than designating the Twin Cities Complex as a site-specific or required implementation site (DCP.D3.2.00704; DCP.V2.27.00022). See Sec. 3.1.2.5, *Sensitive Species Habitat*, under *Context* for how DWR considered the Harvest Water Program's sandhill crane habitat enrollment objectives. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A6-9, A6-38, A6-43, A6-63, A6-67, A6-75, AS-WS-70, AS-WS-76, AS-WS-77]**

Response: DWR Coordinated with Sacramento Regional Sanitation District and Sacramento Area Sewer District and Committed to Future Engagement. See Sec. 3.1.1.5, *Public Outreach*, under *Means for Collecting Comments* for information about how DWR complied with DP P2 requirements regarding consideration of comments from local agencies and DPC. DWR considered all comments received, including those from local agencies and DPC, and evaluated whether DCP activities would directly affect lands prioritized for the implementation of the Harvest Water Program. DWR considered all comments received up to the filing of the Certification, including CPOD protestant testimony regarding Harvest Water as described in the Certification (DCP.AA1.2.00018, p. 53). Additionally, DWR considered all comments received on the Draft Certification, including those from appellant (DCP.AA3.1.00004, pp. 2–4). The Oct. 13, 2025, comment letter submitted on behalf of appellant and other parties (DCP.AA3.2.00001) on the Draft Certification did not specifically identify any issues regarding Harvest Water. The Twin Cities Complex, including the associated RTM footprint, and the northern concrete batch plants along Lambert Road, are not located on properties that are identified as initially receiving Harvest Water, and there are currently no service collection laterals identified in the project map in the most recent Harvest Water CEQA document for those locations (DCP.D3.2.00704). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A6-62]**

Response: While Not Required by DP P2, Effects of Construction and Operation on Groundwater and Groundwater-Dependent Ecosystem Will Be Minimal. DP P2 concerns conflicts with existing land uses. Alleged impacts on groundwater and groundwater-dependent ecosystems do not constitute conflicts with an existing land use. Even if groundwater-dependent ecosystems could be considered an existing land use for purpose of DP P2, substantial evidence demonstrates that the DCP will not conflict with groundwater-dependent ecosystems. As discussed in Sec. 8.3.1, *Methods for Analysis*, of FEIR Ch. 8 (DCP.D1.1.00060, p. 8-13), the construction-related impacts are evaluated using existing groundwater conditions and hydrogeology, standard design and construction methods (DCP.D4.1.00001; DCP.D4.1.00093), and anticipated changes in groundwater elevations, storage, and quality during construction. Furthermore, the DCP will not cause substantial changes in groundwater elevation. Operational impacts from the DCP on

groundwater will be incrementally small, as shown in FEIR Ch. 8. MM GW-1 also requires the monitoring of groundwater elevation levels during construction and will require modifications to construction activities if groundwater elevations decrease more than 10%. FEIR Vol. 2, Ch. 3, Common Response 8, *Relationship to Other Plans, Projects, Policies, and Programs*, and Common Response 10, *Surface Water Quality and Groundwater Resources*, further explain why the DCP will not affect groundwater-dependent ecosystems (DCP.D1.1.00229, p. 8-17; DCP.D1.1.00231, p. 10-22). As stated in Common Response 10, because there are very small modeled changes to interconnected surface waters under operations, substantial evidence supports the conclusion that there will be no adverse effects on groundwater-dependent ecosystems. See also the discussion of the best available science used to analyze groundwater impacts related to Harvest Water in Sec. 3.2.2.2, *Impacts on Harvest Water Program, Sandhill Cranes, and EchoWater*. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A6-42, A6-43, A6-48, A6-67, AS-WS-27, AS-WS-28, AS-WS-69]**

Response: No Interference with Harvest Water Program Pipelines Will Occur. The location of any underground pipes supporting Harvest Water can be identified and avoided by consulting with appellant, by reviewing available records (e.g., permits), along with ground-truthing through potholing. The tunnel's vertical and horizontal alignment will be chosen based on existing and additional geotechnical investigations to avoid conflicts, including providing proper vertical clearance under utilities as described in the Tunnel Excavation and Drive Assessment TM (DCP.D4.3.00017). Per MM AG-3, if it is ultimately infeasible to avoid affecting pipelines supporting Harvest Water, DWR will relocate and/or replace those affected sections of pipelines servicing farmland located outside the construction footprint or provide compensation if relocation is not feasible (DCP.C.1.00002, p. 3-8). Additionally, as shown in FEIR Ch. 8 (DCP.D1.1.00060), the DCP will not cause groundwater conditions to fluctuate substantially, so it will not result in impacts on buried utilities due to settlement. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A6-11, A6-63, A6-66, AS-WS-63]**

3.1.2.2 EchoWater Facilities

Issue. Appellant alleges that operation of the new north Delta intakes could conflict with EchoWater by increasing reverse Sacramento River flows at Freeport in a manner that would affect their ability to meet their Clean Water Act permit requirements for effluent discharge. Appellant alleges that DWR's modeling on reverse flow conditions is flawed because their CPOD testimony shows different results from the DCP FEIR; appellant alleges that their results predict that reverse flow events would increase under the DCP. Appellant alleges that DWR failed to commit to future operational adjustments in response to forecasts of reverse flow events, which they further allege is inconsistent with DP P2. Appellant also raises the

concern that construction of the DCP facilities may interfere with pipelines used to convey sewage to EchoWater. **[A6-9, A6-11, A6-36, A6-38, A6-48, A6-63, A6-64, A6-65, A6-66, A6-72, A6-75, AS-WS-63, AS-WS-64, AS-WS-65, AS-WS-67]**

Response: DP P2 Focus on Physical Siting of DCP Facilities, Not Operations. Appellant fails to cite any authority supporting the argument that DP P2 requires consideration of operations. Because the Delta Plan's regulatory language focuses on analyzing the physical siting of facilities, appellant's concerns regarding alleged operational impacts of the DCP are not an appealable DP P2 issue. Nevertheless, as demonstrated in subsequent responses, substantial evidence demonstrates that the DCP will not result in conflicts caused by the operational impacts alleged by appellant. **[A6-9, A6-11, A6-38, A6-64, A6-65, A6-72, A6-75, AS-WS-64, AS-WS-67]**

Response: Detailed Modeling Conducted to Evaluate Changes in Reverse Flow Conditions in Sacramento River. Reverse flows upstream of the project intake occur naturally, especially during low flows in the Sacramento River. While operation of the DCP has the potential to increase the frequency of these reverse flows, these changes were evaluated by DWR through the application of the DSM2 model based on the 92-year CalSim 3 simulation of existing conditions against project conditions. The results of the assessment determined that the frequency of reverse flows in the Sacramento River upstream of the intakes will increase slightly during intake operation. These increased reverse flows, however, are very small in both duration and distance, and results show that there is no increase in the frequency of stronger reverse flow events caused by project operations (FEIR Ch. 5, *Surface Water* (DCP.D1.1.00032, p. 5-27)).

Figures included in FEIR Ch. 5 demonstrate the limited duration and frequency of reverse flows on the Sacramento River, as well as the extent (measured in miles) of reverse flows when they occur. The reverse flow events were analyzed using DSM2, and for each event the total flow and distance was analyzed. As shown in Ch. 5, Figure 5.5, there is no increase in frequency of stronger reverse flow events between existing conditions and the DCP. For example, this figure identifies that there is no change in the frequency and duration of reverse flow events at a distance of 0.8 mile from the EchoWater outfall (DCP.D1.1.00032, p. 5-28).

Appellant also alleges that DWR did not provide substantial evidence to support the finding that operation of the DCP will not increase reverse flow conditions at their EchoWater facility because their expert testimony at CPOD hearings presented different results. Responses in Sec 3.2.1.8, *Differing Opinions Among Experts*, under *Legal Context*, explain that disagreement among experts does not make an analysis inadequate and does not establish there is a lack of substantial evidence in the record. Since DWR relied on substantial evidence to determine that the DCP will not increase reverse flow conditions compared to existing conditions and since reverse flow conditions already occur under existing conditions, no modifications to DCP operations specifically in response to forecasts of reverse flow events is warranted. Appellant fails to demonstrate that substantial evidence

does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A6-11, A6-36, A6-48, A6-64, A6-65, A6-72, AS-WS-65]**

Response: Implementation Will Not Permanently Interfere with Pipelines Carrying Sewage to EchoWater. The location of underground utilities sewage pipes connected to EchoWater can be identified and avoided by consulting with SacSewer, reviewing available records (e.g., permits), and ground-truthing through potholing. As stated in FEIR Ch. 21 (DCP.D1.1.00172), conflicts with existing utilities are unlikely to occur. The FEIR notes that some existing utilities may need to be relocated, but DWR is consulting with utility companies, a process that will continue during the design phase and will avoid interruption to service (FEIR Vol. 2, Ch. 4 (DCP.D1.1.00245, p. 441)). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A6-36, A6-48, A6-63, A6-66, AS-WS-63]**

3.1.2.3 Public Outreach

See the following section for responses to comments in A6 that are similar to those in A3: Sec. 3.1.1.5, *Public Outreach*, for DWR's responses on how its consideration of comments from local agencies is consistent with DP P2. **[A6-9, A6-62, A6-71]**

Issue. Appellant alleges that DWR failed to meaningfully consider its comments about coordination and consultation, including those about potential conflicts with its Harvest Water Program. Appellant alleges that DWR did not contact them until just weeks before it certified the FEIR. Also, appellant alleges that the DP P2 analysis for the Certification in no way resolved their concerns about coordination and consultation. Supplemental responses by DWR to these specific claims are provided in the following responses. **[A6-9, A6-27, A6-62, A6-71]**

Response: Harvest Water Not an Existing Land Use. Harvest Water is currently under construction and thereby was not an existing land use at the time of the DCP Certification. The challenge, therefore, regarding DWR's consideration of comments from local agencies and the DPC relating to Harvest Water is not an appealable issue under DP P2. **[A6-9, A6-27, A6-62]**

Response: DWR Reached Out to SacSewer. Appellant's allegation that DWR "in no way resolved SacSewer's concerns" implies a different threshold than required under DP P2. DP P2 calls for siting of covered action facilities to avoid or reduce conflicts with existing uses when feasible. DP P2 also states the certifying agency must consider comments from local agencies and the DPC—not that the certifying agency must change the covered action to avoid all potential conflicts claimed by a local agency or the DPC. Substantial evidence demonstrates that DWR considered comments provided by SacSewer in evaluating DCP's consistency with DP P2. The Sacramento Regional County Sanitation (now merged with the Sacramento Area Sewer District) provided scoping comments on Apr. 17, 2020 (DCP.E.1.00241), as documented in Appendix (App.) 1A, *July 2020 Delta Conveyance*

Project Scoping Summary Report and December 2020 Addendum A, of the FEIR (DCP.D1.1.00007). Additionally, DWR received and considered SacSewer comments on the DEIR as demonstrated in FEIR Vol. 2, Ch. 4 (DCP.D1.1.00247, pp. 1074–1149). Appellant fails to acknowledge any of this evidence in the record. Furthermore, DWR will continue its efforts to coordinate with SacSewer (FEIR Vol. 2, Ch. 4 (DCP.D1.1.00247, p. 1124)). Specifically, as stated in the FEIR, DWR will coordinate with SacSewer regarding future design work, postconstruction pavement, and utility protection at facility locations for the DCP and Harvest Water Project (in the vicinity of the Twin Cities Complex) (FEIR Vol. 2, Ch. 4 (DCP.D1.1.00247, p. 1124)). While appellant may not be satisfied by the steps taken by DWR in response to their comments, substantial evidence demonstrates that DWR considered comments received from local agencies and the DPC. See also Sec. 3.1.1.5, *Public Outreach*, for a discussion of the claim that DWR did not adequately engage local agencies. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A6-9, A6-62, A6-71]**

3.1.2.4 Reduction of Conflicts in Siting Intakes

See the following section for responses to comments in A6 that are similar to those in A3: Sec. 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood*. **[A6-69, A6-70]**

Issue. Appellant alleges there are potential conflicts of siting the intakes with Delta Legacy Communities, the NHA designation for the Delta, and the Harvest Water Program. **[A6-22, A6-69, A6-70]**

Response: DWR Reduced Conflicts in Siting North Delta Intakes. Appellant fails to confront the substantial evidence that DWR reduced or avoided conflicts with existing land uses when siting the north Delta intakes. See Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*, which summarizes the substantial evidence that appellant did not address in their appeal regarding how alternative intake locations failed to meet project objectives or had greater environmental impacts. Additionally, see Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network,* which explains that DP P2 does not require consideration of alternatives that involve a fundamentally different project than DCP. See Sec 3.1.1.4, *Compatibility with National Heritage Area Designation*, which explains that not only is the NHA designation not a land use (and thus not a DP P2 issue), but also that the DCP will not interfere with the NHA designation. See Sec. 3.1.2.1, *Harvest Water Program*, regarding the summary of substantial evidence that appellant fails to confront, which demonstrates that the DCP will not conflict with the Harvest Water Program. **[A6-69, A6-70]**

DWR will continue avoiding or reducing land use conflicts as part of implementation of the DCP MMRP. Such design refinements are part of the design development process and cannot be fully completed until DWR gains access to all the parcels within the project footprint in order to conduct site-specific surveys and geotechnical investigations. Appellant fails to

demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A6-22]**

3.1.2.5 Sensitive Species Habitat

See the following section for responses to comments in A6 that are similar to those in A3: Sec. 3.1.1.9, *Sensitive Species Habitat*. **[A6-68, AS-WS-28]**

Issue. Appellant alleges that the DCP (specifically the Twin Cities Complex) will remove 644 acres of high-quality foraging habitat for sandhill crane. Appellant alleges that not only will this harm the species but also effectively make it more difficult for appellant to meet their own requirements to enroll and manage a yearly average 3,500 acres of sandhill crane habitat under the Harvest Water Program. Appellant also raises concerns that additional noise, vibration, lighting, and general ongoing maintenance and operations will have additional effects on crane roosting and foraging that extend beyond the physical footprint of the Twin Cities Complex. **[A6-43, A6-68, AS-WS-28, AS-WS-70, AS-WS-76]**

Context. Appellant's allegation that impacts on sandhill crane habitat at the Twin Cities Complex would interfere with the Harvest Water Program's ability to meet their habitat objectives is premised on the assumption that the Twin Cities Complex constitutes a site-specific location for Harvest Water Sandhill Crane habitat enrollment or management. As explained in Sec. 3.1.2.1, the administrative record does not establish site-specific land use or ecological planning tying Harvest Water implementation, including sandhill crane obligations, to the Twin Cities Complex. Harvest Water Program planning materials describe a program-level framework implemented through voluntary enrollment across a broad service area rather than designating specific parcels as required crane habitat sites (DCP.D3.2.00704). Accordingly, allegations that the DCP would interfere with Harvest Water's Sandhill crane enrollment targets do not present an appealable land use conflict under DP P2. Nonetheless, DWR evaluated potential effects of the DCP on sandhill cranes under CEQA and adopted extensive avoidance, minimization, and mitigation measures, as summarized by the responses in this section. See Sec. 3.2.2.2 under *Impacts on Sandhill Cranes* for a summary of the substantial evidence that DWR used best available science to address impacts on sandhill cranes. As explained in Sec. 3.1.1.1, DP P2 does not require that DWR adopt mitigation to demonstrate consistency with DP P2, but where appropriate they are discussed to illustrate DWR's effort to reduce conflicts with land uses. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[AS-WS-70, AS-WS-76]**

Response: Allegation Regarding Harvest Water Requirement for Enrollment of Sandhill Crane Habitat Is Not a DP P2 Appealable Issue. DP P2 requires that water management facilities be sited to avoid or reduce conflicts with existing land use, where feasible. The policy does not require that a certification of consistency consider how it may indirectly affect the ability for other plans, programs, or projects to achieve their

programmatic habitat objectives, particularly where no site-specific land use has been established at the project site. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A6-68]**

Response: DWR Analyzed Effects of Noise, Lighting, and Vibrations on Sandhill Cranes. In regard to noise, figures depicting the overlay of sound level contours on modeled foraging and known roosts sites are shown in FEIR App. 13G, *Construction Sound Level Impacts on Sandhill Cranes* (DCP.D1.1.00119). In most of the study area, the noise analysis was conducted based on the assumption that there will be direct line-of-sight from sandhill crane habitat areas to the construction site, and, therefore, provides a conservative estimate of effects (DCP.D1.1.00119, p. 13G-1). Although U.S. Fish and Wildlife (USFWS) uses 60 dBA as a significance threshold for other special-status bird species (DCP.D3.1.03782, p. 2.4-3; DCP.D3.1.03783, p. 13; DCP.D3.1.03781, p. 2), in the absence of data indicating the specific effect that sound levels above baseline would have on sandhill crane and in the absence of a quantifiable baseline effect of periodic noise from hunting under existing conditions, sound levels were conservatively assessed above both 60 dBA and 50 dBA (DCP.D1.1.00119, p. 13G-1).

In regard to lighting, effects of construction-related light will be greater at the intakes, where existing conditions are dark and rural, compared with the Twin Cities Complex, where there are existing sources of light that may illuminate suitable habitat (DCP.D1.1.00112, p. 13-273). Nighttime construction could also result in headlights flashing into roost sites when construction vehicles are turning onto or off construction access routes. Direct light from automobile headlights has been observed to cause roosting cranes to flush and it is thought that they may avoid roosting in areas where lighting is bright. However, cranes exhibit high roost site fidelity (DCP.D3.1.02163, p. 2) and, in some cases, may still use artificially lit sites due to this loyalty.

In regard to vibrations, the use of tunnel boring machines during construction could potentially cause groundborne vibration in the immediate vicinity of tunnel construction areas. However, because of the depth at which the tunnel will be constructed, and because the deep soil cover over the tunnel will effectively dampen and absorb propagated energy from the tunnel crown and the tunnel floor, no significant noise and vibration effects from the operation of the tunnel boring machine on sandhill cranes are anticipated (DCP.D1.1.00188, pp. 24-30–24-75).

In regard to mitigation measures, the CMP will be required to offset any losses of roosting and foraging habitat for sandhill cranes by creating roosting and foraging habitat and protecting agricultural foraging habitat for sandhill cranes (CMP-18a: *Sandhill Crane Roosting Habitat* and CMP-18b: *Sandhill Crane Foraging Habitat*) (DCP.D1.1.00018, Table 3F-1-3). Roosting habitat is expected to be created on Bouldin Island or in suitable lands that provide connectivity between Stone Lakes NWR and the Cosumnes River Preserve, and foraging habitat will involve protecting high- to very high–value foraging habitat within 2

miles of new project roost sites with patch sizes of at least 160 acres (CMP-18a and CMP-18b) (DCP.D1.1.00018, Table 3F.1-3). MM NOI-1; MM BIO-2b: *Avoid and Minimize Impacts on Terrestrial Biological Resources from Maintenance Activities*; MM AES-4b; MM AES-4c: *Install Visual Barriers along Access Routes, Where Necessary, to Prevent Light Spill from Truck Headlights toward Residences*; and MM BIO-33 will mitigate the other impacts on greater sandhill crane and lesser sandhill crane. Mitigation measures will reduce direct impacts in the following ways: (1) implementing protective measures during maintenance activities, which will include assessing work areas for habitat and conducting surveys where appropriate and delaying maintenance activities (either by season or time of day); (2) designing lighting that avoids spillover into habitat; (3) reducing noise impacts through time-of-day restrictions on construction and noise-attenuating measures where feasible, as determined by the contractor; and (4) avoiding and minimizing disturbance of roosting and foraging cranes by conducting surveys and work outside of the winter crane season (Sep. 15 through Mar. 15). Mitigation measures will also establish roosting and foraging habitat to compensate for disturbance and potential displacement of sandhill cranes during construction. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A6-43, A6-68, AS-WS-28, AS-WS-70]**

3.1.3 A7—City of Stockton (Policy DP P2)

See the following section for responses to comments in A7 that are similar to those in A6: Sec. 3.1.2.4, *Reduction of Conflicts in Siting Intakes*. **[A7-9, A7-20]**

3.1.3.1 Delta Water Supply Project and Regional Wastewater Control Facility

Issue. Appellant alleges that the DCP will impair the operations of the City of Stockton's Delta Water Supply Project and Regional Wastewater Control Facility, and that DWR improperly relied on long-term averages of modeling output or that the impact assessments should have presented modeling results on an hourly or daily timestep and assessed impacts of project operations on Delta water quality using that data. Appellant alleges that their CPOD testimony shows that the water quality analysis in the DCP FEIR is flawed. Appellant alleges that DWR did not adequately consider the City of Stockton's operational threshold of 110 microgram per liter (mg/L) chloride for its drinking water intake. Appellant also alleges that DWR did not provide sufficient information to determine that the DCP will not increase bromide concentrations at the City of Stockon's intake; appellant alleges it is unclear whether DWR's calculation methodology for bromine in the FEIR accurately represents bromide concentrations at Stockton's intake. Appellant also alleges that the DCP will increase the likelihood and severity of harmful algal blooms. **[A7-9, A7-52, A7-54, A7-55, A7-57, A7-58, A7-60, A7-62, AS-WS-71, AS-WS-72, AS-WS-73, AS-WS-77]**

Response: DP P2 Focuses on Physical Siting of DCP Facilities, Not Operations and Maintenance. Appellant alleges that the DCP was not sited to avoid or reduce conflicts, but they fail to cite and address all the substantial evidence demonstrating that through design elements and other siting conditions, DWR reduced conflicts with existing uses. See Sec. 3.1.1.1, *Demonstrating Consistency with DP P2*, which explains what compliance with DP P2 requires. DP P2's regulatory language requires a certifying agency to evaluate impacts of the physical siting of facilities on existing uses and not impacts of operations and maintenance of a covered action. Nonetheless, for the purpose of public disclosure, DWR analyzed effects of DCP operations and maintenance activities in its Certification in DP P2 Att. 2 (DCP.AA1.2.00019). Analysis of the effects of DCP operations and maintenance are also disclosed in FEIR Ch. 9, *Water Quality* (DCP.D1.1.00064), which evaluated the ability of project operations to protect beneficial uses based on adherence to D-1641 water quality standards. As discussed in the responses in this section, the analysis provided in the FEIR Ch. 9 shows there is substantial evidence in the record for DWR's findings that operations of the DCP facilities will not change water quality for the City of Stockon in a manner that will prevent existing uses identified by appellant from persisting. Appellant thereby fails to show that there is not substantial evidence in the record to support DWR's finding of consistency of the DCP with DP P2. **[A7-9, A7-52, A7-54, A7-55, A7-57, A7-58, A7-60, A7-62, AS-WS-71, AS-WS-72, AS-WS-73, AS-WS-77]**

Response: Threshold Used for Chloride to Analyze Effects on City of Stockton's Drinking Water Intake Supported by Evidence in the Record. The City of Stockton has a drinking water supply intake on the San Joaquin River at Empire Tract. The *Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Bay-Delta Estuary* (Bay-Delta WQCP) objectives do not specifically identify this as a compliance location. However, Central Valley Regional Water Quality Control Board Water Quality Control Plan (WQCP) includes secondary maximum contaminant levels (MCLs) as water quality objectives for waters designated for municipal and domestic supply use. The chloride secondary MCL consists of a recommended level of 250 mg/L for consumer acceptance, an upper level of 500 mg/L if it is neither reasonable nor feasible to provide more suitable waters, and a short-term level of 600 mg/L for existing community water systems on a temporary basis pending construction of treatment facilities or development of acceptable new water sources (FEIR App. 9F (DCP.D1.1.00074, pp. 9F-4—9F-5)). The analysis of effects of the project alternatives on chloride in the San Joaquin River at Empire Tract considered these water quality objectives. The City of Stockton's own dataset shows frequent chloride values of about 110 mg/L, including values exceeding 200–280 mg/L during periods when diversions continued (DCP.V2.3.00025). This information demonstrates that the claimed 110 mg/L operational threshold is not the City of Stockton's actual operational cutoff and therefore cannot serve as a criterion by which to evaluate effects of the DCP on existing uses.

DWR completed another round of modeling for CPOD that included updated operating criteria from the ITP and did not find substantive changes that would alter the water quality.

The DSM2 models are typically continuously updated to reflect the most updated physical and regulatory conditions and specific versions of the DSM2 model used in the FEIR reflects the best available model at that time (DCP.V1.2.00219, p. 2). Chloride modeling results are based on DSM2 simulations completed for the final DCP ITP issued on Feb. 14, 2025 (DCP.V1.2.00215, p. 1). Modeled concentrations at Empire Tract are 134 mg/L or less 99.9% of the time under existing conditions (DCP.V1.2.00215, Table CL-ITP-6-1-A), compared to 129 mg/L under the DCP with ITP operating criteria (DCP.V1.2.00215, Table CL-ITP-6-2-A). DWR's modeling results demonstrate that implementation of the DCP will not cause chloride to exceed the applicable regulatory objectives more frequently. Based on these modeled differences in chloride, the DCP will not substantially degrade water quality with regard to chloride on a long-term average basis. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A7-54, A7-57, A7-58, A7-60, A7-62, AS-WS-71, AS-WS-72, AS-WS-73]**

Response: Substantial Evidence Supports No Effects on Stockton's Intake as a Result of Changes in Bromide Concentrations. DWR did not rely on a chloride-bromide regression or correlation to evaluate bromide at Stockton's intake (DCP.D1.1.00070, p. 9D-1). DWR used a mass-balance approach to evaluate bromide at the City of Stockton's intake, which is the appropriate method for estimating bromide in this part of the estuary where multiple water sources mix and tidal conditions vary, while for Delta locations where predominant source of bromide is sea water, a regression calculation method was used (DCP.D1.1.00070, p. 9D-1).

Bromide modeling results are based on DSM2 simulations completed for the final DCP ITP issued on Feb. 14, 2025 (DCP.V1.2.00214, p. 1). The increases in bromide concentrations under DCP operations at Empire Tract will not substantially degrade water quality, given the relatively small increases in concentration that are observed on a long-term average basis (DCP.V1.2.00214, Tables BR-ITP-6-1-B and BR-ITP-6-2-B). As explained in the FEIR, bromide concentrations up to 300 mg/L was considered acceptable to provide drinking water supplies adequate flexibility in their choice of treatment method (DCP.D1.1.00064, p. 9-52). The frequency that monthly average bromide concentrations exceed 300 mg/L under the full simulation period is 4% under existing conditions compared to 3% under DCP with ITP operating criteria (DCP.V1.2.00214, Table BR-ITP-6-3).

Bromide concentrations at the City of Stockton's intake are governed by regional salinity intrusion processes, not the DCP operations (DCP.D1.1.00064, p. 9-60). DWR's modeling consistently shows that the DCP operations do not increase bromide at the City of Stockon's intake in a way that would impact municipal supply (DCP.D1.1.00064, p. 9-61). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-54, A7-57, A7-58, A7-60, A7-62, AS-WS-71, AS-WS-72, AS-WS-73]**

Response: Appropriate Modeling Timesteps Used to Determine the DCP's Effects on City of Stockton Facilities. Appellant alleges that DWR only provided long-term averages in the record and thereby there is insufficient data for them to review to determine the full extent of effects of the DCP on their ability to divert water from the San Joaquin River. Appellant fails to confront the substantial evidence that the modeling results are presented at an appropriate timestep to reflect the level of precision of those results (DCP.D1.1.00231, p. 10-9). Because the DCP will be operating long into the future under a variety of hydrologic conditions, understanding water quality effects consistently during a given time of year for each water year type is of greater importance than understanding water quality change that may occur infrequently on a single day or in a single hour (DCP.D1.1.00231, p. 10-10). Water quality modeling is based on inputs from CalSim 3, a monthly model. In real-time operations, reservoir releases are not, and will not, always be held constant for the entire month, as represented in the DSM2 inputs from CalSim 3 (DCP.D1.1.00231, p. 10-10). The monthly consideration of modeling of whether water quality exhibits notable changes with the DCP compared to existing conditions has less uncertainty than considering a finer timestep (DCP.D1.1.00231). Additionally, appellant has not provided information in the record to support the claim that appellant alters operations based on sub-daily water quality. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A7-54, AS-WS-73]**

Response: Stockton's Ability to Comply with National Pollutant Discharge Elimination System Permit Requirements for Wastewater Facility Is Not Affected. Appellant's allegation fails because appellant did not cite and confront all the substantial evidence compiled by DWR as part of the Certification that the DCP will have minimal effects on nutrients and dissolved oxygen. The following summarizes the substantial evidence that appellant fails to confront in their appeal and written submission. Long-term average total nitrogen concentrations are anticipated to remain similar to existing conditions in the future due to ongoing and future anticipated regulations on nonpoint and point sources of total nitrogen to Delta waters. The DCP will not present new or substantially changed sources of total nitrogen or total phosphorus in the Delta (FEIR Ch. 9 (DCP.D1.1.00064, p. 9-199)). Small increases in total nitrogen and total phosphorus could occur in some areas of the Delta due to a greater proportion of the water being San Joaquin River water, which has higher total nitrogen and total phosphorus concentrations as compared with other Delta Primary source waters such as the Sacramento River and eastside tributaries. Nevertheless, such changes will be small in magnitude and will not occur at levels that will adversely affect Delta beneficial uses with regard to nutrients (DCP.D1.1.00064, p. 9-196). Conversely, there may be a decrease in total nitrogen (and possibly phosphorus as well) concentrations as lands used for agriculture are converted for restoration as part of the CMP, thus reducing fertilizer application on these lands (DCP.D1.1.00064, p. 9-200). **[A7-9, A7-55, A7-57, AS-WS-77]**

Regarding dissolved oxygen, the most notable impairment occurred historically in the Stockton Deep Water Ship Channel. Since adoption of the Stockton Deep Water Ship

Channel total maximum daily load in 2007, dissolved oxygen conditions in Deep Water Ship Channel have been improving (DCP.D1.1.00064, p. 9-199). The CMP activities under the DCP are not anticipated to adversely affect dissolved oxygen in Delta waters (DCP.D1.1.00064, p. 9-134). Cumulatively, the DCP, including its CMP activities, along with reasonable foreseeable projects will have minimal to no effects on dissolved oxygen in the Delta (DCP.D1.1.00064, p. 9-199). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-9, A7-55, A7-57]**

Response: DWR Found That the DCP Not Expected to Cause Substantial, or Even Measurable, Differences in the Frequency or Magnitude of Harmful Algal Blooms. Appellant fails to confront all the substantial evidence compiled by DWR as part of the Certification that the DCP will have minimal effects on harmful algal blooms; since they do not address all the substantial evidence in DWR's record, they fail to meet their burden for their DP P2 argument. The key factors thought to affect harmful algal bloom development in the Delta are (1) water temperature, (2) channel velocities and associated turbulence/mixing, (3) residence time, (4) nutrients, and (5) water clarity. The DCP may result in a small increase in residence times in some open water areas of the central portion of the Delta, in areas that already experience relatively long residence times because use of the north Delta divisions would result in reduced south Delta pumping under a few circumstances (FEIR Ch. 9 (DCP.D1.1.00064, p. 9-176)). In the northern, southern, western, or eastern portions of the Delta, residence times would be minimally affected by the DCP relative to existing conditions. Modeled residence time at the Stockton Waterfront generally show a decrease or no change in the months Jun. through Nov. (DCP.D1.1.00064, p. 9-165). Occasionally there is a small increase (i.e., up to 7 hours) in residence time, but never an increase of 10% or greater. Although a decrease in residence time was modeled at the Stockton Waterfront, there is unlikely to be any change in the density or extent of *Microcystis* and other cyanobacteria at this location because it would not be of sufficient magnitude to change *Microcystis* dynamics (i.e., growth rates, accumulation, or aggregation) (DCP.D1.1.00064, p. 9-166). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A7-9, A7-54, A7-57, AS-WS-72, AS-WS-73, AS-WS-77]**

Response: DCP Will Not Affect the Viability of the Groundwater Basin. The appellant raises a concern that the DCP will result in losses of surface water and thereby is a concern to the viability of the groundwater basin. In raising this issue, the appellant fails to confront the substantial evidence that the DCP will not affect Stockton's surface water intake in the Delta, as summarized in the response points above, and in the analysis in FEIR Ch. 8, which finds that the DCP will have limited effects on the groundwater resources in the Delta. The DeltaGW Model domain is divided into five model subregions with model subregion 4 representing the Delta region (DCP.D1.1.00060, p. 8-15). The groundwater model shows that the average annual decline in groundwater storage in DeltaGW subregion 4 is reduced by a

small amount—181 acre-feet under the DCP—which is a small fraction of average decline of 9,582 acre-feet per year under existing conditions (DCP.D1.1.00060, p. 8-49). The FEIR found that operation of the DCP will not benefit groundwater storage and more importantly will not result in an adverse impact on groundwater storage (DCP.D1.1.00060, p. 8-48). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-55]**

3.1.3.2 Air Quality

Issue. Appellant alleges that DWR failed to site the DCP in a manner to avoid affecting adjacent existing uses through increased air pollution and associated health risks. **[A7-9, A7-56, AS-WS-71]**

Response: Any Change in Air Quality Will Not Prevent Use of Private and Public Facilities in Stockton. DP P2 does not require DWR to maintain all existing qualities of existing uses but rather that DWR site the DCP to avoid or reduce conflicts with existing uses when feasible. Therefore, appellant's concerns about an alleged indirect conflict associated with air quality do not constitute an appealable DP P2 issue. Furthermore, FEIR Ch. 23, *Air Quality and Greenhouse Gases* (DCP.D1.1.00177), provides an analysis of the DCP's effects on air quality and greenhouse gases. As explained in Ch. 23, air quality impacts from equipment and dust emissions in San Joaquin Valley Air Basin (i.e., inclusive of the City of Stockton) will be reduced through implementation of MM AQ-2: *Offset Construction-Generated Criteria Pollutants in the San Joaquin Valley Air Basin* and EC-11: *Fugitive Dust Control*. The FEIR found that under the DCP, chronic cancer and noncancer risks are not predicted to exceed air district thresholds and neither project construction nor long-term operations and maintenance will expose sensitive receptors to substantial pollutant concentrations (DCP.D1.1.00177, p. 23-157). Appellant fails to cite or discuss this evidence demonstrating that DWR has designed the DCP to reduce air quality impacts. Relevant mitigation identified by DWR in FEIR Chap. 23 (DCP.D1.1.00177) and adopted in the enforceable MMRP (DCP.C.1.00002) will function to reduce a potential indirect conflict with existing uses associated with changes in air quality due to construction of the DCP. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-9, A7-56, AS-WS-71]**

3.1.3.3 Alternative Locations Evaluated for Intakes

See the following section for responses to comments in A7 that are similar to those in A3: Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*. **[A7-9, A7-20, A7-58, A7-59]**

Issue. Appellant alleges that DWR did not adequately consider intake locations in the western Delta. **[A7-9, A7-20, A7-58, A7-59]**

Response: Western Delta Intake Locations Considered. Intake locations in the western Delta were considered but were screened out because they would increase the risk to delta smelt and longfin smelt (DCP.D4.3.00009, p. 3F-8) and because they would have limited the ability to adjust to changes in sea level and increase in salinity (FEIR App. 3A (DCP.D1.1.00011, pp. 3A-30–3A-33)). Furthermore, a prospective intake site near Antioch was screened out because it would be subject to seismic risks due proximity of faults near Suisun Bay (DCP.D1.1.00011, p. 3A-32) and because it would have limited ability to adjust to changes in sea level and increase in salinity (DCP.D1.1.00011, p. 3A-28). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A7-9, A7-20, A7-58, A7-59]**

3.1.3.4 Through-Delta Water Conveyance and Delta Levee Network

See the following section for a response to a comment in A7 that is similar to that in A3: Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network*. The allegations related to the adequacy of evidence in the record related to considerations of an alternative of creating a "freshwater pathway" or "armored pathway" created by Delta levees are the similar as those in A3, which address evaluation of a through-Delta water conveyance alternative instead of dual conveyance. **[A7-59]**

3.1.3.5 Siting Criteria for Shafts

See the following section for a response to a comment in A7 that is similar to that in A3: Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*. **[A7-58]**

Issue. Appellant alleges that DWR did not adequately consider how siting of tunnel shafts considered water supply wells. **[A7-59]**

Response: Siting of Facilities Avoids Impacts on Well Infrastructure When Feasible. The title of DP P2 is "Respect Local *Land Use* When Siting Water or Flood Facilities or Restoring Habitats" (emphasis added). Wells are infrastructure that supports a land use but are not a land use in and of themselves. **[A7-59]**

Furthermore, the presence of wells was explicitly considered when siting the tunnel shafts. As documented in CER App. C5 (DCP.D4.3.00021), DCA considered all known existing infrastructure that may be disrupted or require relocation as part of construction of the shafts. The existing infrastructure included in this evaluation included water supply wells. Existing groundwater wells servicing farmland outside the construction footprint will be protected in place to the extent feasible through redesign of specific project elements, if necessary (DCP.C.1.00002, p. 3-8). If avoidance is infeasible, effects on such existing groundwater wells will be mitigated through relocation or replacement of wells (DCP.C.1.00002, p. 3-8). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-59]**

3.1.3.6 General Plan Versus Existing Use Analysis

See the following section for responses to comments in A7 that are similar to those in A3: Sec. 3.1.1.11, *General Plan Versus Existing Use Analysis*. **[A7-9, A7-52, A7-57, A7-61, AS-WS-74]**

Issue. Appellant alleges that DWR inadequately considered land use designations from the San Joaquin County and City of Stockton General Plans. **[A7-9, A7-52, A7-57, A7-61, AS-WS-74]**

Response: DWR Adequately Considered General Plan Designations. As documented in FEIR Ch. 14, project compatibility and potential effects on planned future uses were assessed by reviewing land use designations, goals, and policies listed in multiple planning documents (DCP.D1.1.00126, p. 14-11). These documents include the San Joaquin County General Plan and the City of Stockton General Plan. The DCP includes 1.2 miles of new paved road on Rough and Ready Road on Port of Stockton, a new bridge over Burns Cut from Port of Stockton, and supervisory control and data acquisition (SCADA) lines on Rough and Ready Island (FEIR Ch. 3 (DCP.D1.1.00010, p. 3-45)). The City of Stockton General Plan designation for Rough and Ready Island is institutional, which allows for public and quasi-public uses. The DCP activities on Rough and Ready, as they consist of appurtenant infrastructure to support new public water facilities, is compatible with this City of Stockton General Plan land use designation. **[A7-52, A7-57, A7-61, AS-WS-74]**

DCP facilities will result in the permanent conversion of 427 acres, including 385 acres of land designated for agriculture use under the *San Joaquin General Plan Policy Document*. 30 acres of land designated by the county as open space will be permanently converted (FEIR Ch. 14 (DCP.D1.1.00126, p. 14-28)). A limited amount of land designated for other uses will also be permanently converted, including 11 acres of land designated for public/semi-public use and 2 acres of industrial land. Temporary surface impacts in San Joaquin County will occur on 451 acres of land. This includes 410 acres of agricultural land, 29 acres of land generally designated as open space, 11 acres of land designated for public/semi-public use, an acre of commercial land, and an acre of residential land (DCP.D1.1.00126, p. 14-28). The DCP footprint predominantly overlaps with areas designated by San Joaquin County as agriculture, an anticipated outcome given that the majority of the Delta is designated as agriculture. Many project elements are limited in where they can be sited given their function (e.g., shaft sites are tied to tunnel alignment) and ultimately had to be sited in areas zoned as agriculture. See Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible*, which summarizes the substantial evidence for the finding that while impacts on agriculture designated land uses could not be avoided given the scale of the DCP, DWR reduced conflicts with agriculture designated land uses in a manner consistent with DP P2. As explained in Sec. 3.1.1.1, DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible (DCP.AA2.1.00096, p. 36.). Appellant fails to meet their burden to address all the multiple means documented in the record and the

substantial evidence discussed above by which DWR reduced conflicts with general plan agricultural land use designations. **[A7-9, A7-52, A7-57, A7-61, AS-WS-74]**

3.1.3.7 Consideration of Appellant Comments

Issue. Appellant alleges that DWR failed to meaningfully consider its comments. **[A7-60, AS-WS-72]**

Response: There Is Substantial Evidence That DWR Considered Appellant's Comments. As recognized by appellant, DWR's detailed Certification presented a crosswalk between appellant's comments on water and wastewater operations and DWR's response in the context of DP P2 (DP P2 Att. 1 (DCP.AA1.2.00018); DP P2 Att. 2 (DCP.AA1.2.00019)). CPOD protestant testimony was also considered during preparation of the Certification, and it was determined that the issues raised by the CPOD protestants were within the scope of comments raised during the CEQA process (DCP.AA1.2.00018, p. 53). Appellant's claim that DWR did not evaluate or disclose potential for levee failure or overtopping that could result from a high stage in the Delta fails to confront the evidence in the record; the Certification provided a response to this concern, which explains that the suggested relationship between future sea level rise, potential levee failure, and future water quality impacts is speculative and not definable as a foreseeable action (DCP.AA1.2.00019, p. 31). DP P2 calls for siting of covered action facilities to avoid or reduce conflicts with uses when feasible. More importantly, there is substantial evidence that the DCP will not interfere with appellant's existing uses, as demonstrated in DWR's responses in Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility*, and Sec. 3.1.3.6, *General Plan versus Existing Use Analysis.* Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A7-60, AS-WS-72]**

3.1.4 A1—Delta Protection Commission (Policy DP P2)

See the following sections for responses to comments in A1 that are similar to those in A3: Sec. 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood*; Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*; Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Documentation of Use of Best Available Science* and *Seismic Hazard*; Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible*; and Sec. 3.1.1.12, *Recreational Opportunities in the Delta*. **[A1-22, A1-27, A1-28, A1-30, A1-31, A1-32, A1-38, A1-39, A1-40, A1-49, A1-53, A1-54, A1-55, A1-57, A1-59, A1-WS-8, A1-WS-9, A1-WS-10]**

See also the following section for responses to comments in A1 that are similar to those in A9: Sec. 3.1.7.3, *Alternative Locations Evaluated for Intakes,* under *DWR Relied on Best Available Science When Considering Design Alternatives.* **[A1-30, A1-31, A1-32, A1-38, A1-57, A1-59, A1-WS-8, A1-WS-9]**

See also the following section for responses to comments in A1 that are similar to other comments in A1 regarding the DCP's consistency with applicable feasible Delta Plan mitigation measures: Sec. 3.3.4.2, *Analysis Meets Delta Plan Mitigation Requirements*, under *Commission's Mapping Does Not Support an Alleged Mitigation Measure Inconsistency*. **[A1-51]**

3.1.4.1 DP P2 Consistency with the LURMP

Issue. Appellant alleges that that the DCP is inconsistent with DP P2 because DWR did not take the further step to assess land use conflicts as evaluated in the Land Use and Resource Management Plan (LURMP). **[A1-57]**

Response: DWR Considered DPC's Comments. With respect to appellant's claim that the DCP is inconsistent with the LURMP, DWR does recognize that DP P2 calls for proponents of covered actions to consider comments from the DPC. Comments submitted by the DPC helped inform DWR of the conflict mechanism to be evaluated in the DP P2 consistency analysis for the DCP. The existing land use conflicts analysis included in the Certification is presented in Table 2 of DP P2 Att. 1 (DCP.AA1.2.00018, pp. 57–58), which provides an overview of comments from the DPC as they pertain to potential conflicts between the DCP and existing land uses, the extent to which the comment was relevant to DP P2 considerations, and how DWR responded to the DPC's comment. Actions taken by the state are not subject to consistency with LURMP. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-57]**

3.1.4.2 Mitigation Requirements for DP P2 Consistency

Issue. Appellant alleges that DP P2 requires that DWR identify mitigation measures to avoid or lessen any conflicts with existing uses to a less-than-significant level or that mitigation measures should be in place to avoid any conflicts. **[A1-24, A1-28, A1-29, A1-33, A1-38, A1-51, A1-56, A1-57, A1-60, A1-WS-6, A1-WS-7]**

Response: DSC Has Unique Role, Different from CEQA, with Respect to Local Land Use in the Delta. DP P2 only requires that a covered action be sited to reduce or avoid conflicts with existing uses when feasible**.** Although DP P2 mentions mitigation, it simply identifies efforts that could constitute substantial evidence supporting the finding that a covered action has been sited to avoid or reduce conflicts with existing land uses. As demonstrated in the Certification, relevant mitigation identified by DWR in the FEIR and adopted in the enforceable MMRP will function to avoid or reduce potential conflicts with existing uses (e.g., DWR adopted measures to address noise and vibration impacts, such as MM NOI-1 (DCP.C.1.00002, p. 3-96)).

With respect to appellant's claim that DP P2 requires that DWR identify mitigation measures to avoid or lessen conflicts with existing uses to a less-than-significant level or to a level that

the potential conflict is avoided, appellant is incorrect. As explained by the DSC, "[w]here conflicts cannot be avoided altogether, DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible. DP P2 does not specify that to adequately reduce a conflict, the siting of the covered action must maintain all existing qualities of a use, nor does it specify an extent to which conflict must be reduced" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A1-24, A1-28, A1-29, A1-33, A1-38, A1-51, A1-56, A1-57, A1-60, A1-WS-7]**

Response: While Not Required by DP P2, the DCP Includes Detailed and Adequate Mitigation Related to Impacts of Project. As described in Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *DP P2*, while it is inevitable that any project of the magnitude of the DCP will conflict with local land uses, significant efforts have been made during the DCP planning process to reduce conflicts. Note that according to the DSC, "DP P2 does not require that a covered action avoid displacing existing uses, but only that it avoid or reduce conflicts with existing uses when feasible" (Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Program (July 16, 2021), p. 112). DWR has made a good-faith effort to strike the best possible balance in furthering the coequal goals of the Delta Reform Act and in protecting existing Delta land uses; however, the DCP contains elements where tradeoffs with individual existing land uses were made in consideration of the coequal goals of the Delta Reform Act. **[A1-WS-6]**

As explained in Sec. 3.1.1.1, *Demonstrating Consistency with DP P2*, DP P2 does not require mitigation. However, DP P2 Att. 2 (DCP.AA1.2.00019) details the mitigation measures from the FEIR and adopted in the MMRP that were identified as relevant for DP P2 considerations because DWR is focused on minimizing conflicts with existing land uses from DCP operations. Mitigation measures were adopted by DWR to avoid or substantially lessen impacts on environmental resources, including those in part or wholly related to existing physical uses. The purpose of mitigation measures under CEQA is to reduce impacts on a resource to a less-than-significant level whenever feasible; nonetheless, residual impacts may remain following appropriate mitigation measures. **[A1-WS-6]**

Based on the information provided by local agencies and the DPC regarding potential existing land uses—summarized in DP P2 Att. 1, Tables 2 through 5 (DCP.AA1.2.00018)—and DWR's analysis of the DCP provided in the FEIR and DCA's analysis provided in the CER, DWR evaluated each element of the DCP and its respective potential to result in a conflict with an existing land use in the DCP's footprint, as summarized in DP P2 Att. 1, Table 7 (DCP.AA1.2.00018, pp. 93–113). Substantial evidence in the record shows that the DCP's facilities are constrained to the locations identified in DP P2 Att. 1—particularly Sec.

3, *Project Siting*, and Table 7. As shown in DP P2 Att. 1, Table 7, where potential conflicts could not be avoided, measures were available to reduce the potential conflicts. DWR has determined that the consideration of conflicts provided in DP P2 Att. 1, Table 7 adequately evaluated the potential conflicts known at the time it developed this Certification.

Based on substantial evidence in the record, DWR has determined that the DCP's facilities are situated in such a way to avoid or reduce conflicts with existing land uses when feasible. Conflicts were avoided when feasible during design of the DCP. Although it was not possible to avoid all potential conflicts with existing land uses, the scale of any potential conflict was reduced through various ECs and mitigation measures. DCA undertook actions early in the planning process to design the DCP to avoid and minimize conflicts with existing land uses when feasible, such as through the SEC, as discussed in DP P2 Att. 1 (DCP.AA1.2.00018, p. 31–32). In addition, as shown in DP P2 Att. 1 and DP P2 Att. 2 (DCP.AA1.2.00019), the DCP considered the comments provided to DWR and DCA that were germane to characterizing existing land uses within and around the DCP's footprint and recommendations to avoid or minimize conflicts with these existing land uses. This process of reviewing comments and recommendations—including input from local and regional entities, Tribes, local landowners, and users of Delta resources—provided to DWR and DCA involved extensive analysis of potential conflicts with existing land uses. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A1-24, A1-WS-6]**

Issue. Appellant alleges that mitigation related to impacts of project siting on small communities is not sufficiently detailed or adequate and thus is not consistent with DP P2. **[A1-23, A1-50]**

Response: Conflicts Reduced with Delta Small Communities. As explained in Sec. 3.1.1.1, while not required to demonstrate consistency with DP P2, mitigation measures and other commitments demonstrate DWR's efforts to reduce land use conflicts. DWR has made numerous commitments to address effects within the local community during construction of the project, with the overall goal being to avoid, minimize, or offset these effects for residents, businesses, recreators, subsistence fishers, Tribes, environmental justice communities, emergency responders, tourists, environmental nongovernmental organizations, agricultural operations, and the traveling public, among many others. To describe, memorialize, track, and fulfill these commitments, DWR has established an Accountability Action Plan for the project (DCP.D6.5.00002). Core components of DWR's Accountability Action Plan include the Ombudsman Program (DCP.D6.5.00004); the Mitigation, Monitoring, and Reporting Program (DCP.C.1.00002); and the CBP (DCP.D6.4.00001); as well as community advisory groups and project communications. Mitigation measures and ECs identified in the MMRP address potential impacts, including potentially significant environmental impacts analyzed in the FEIR (DCP.C.1.00002, Tables 1–3). An ombudsman will increase effective communication and aid with claims submittals. The CBP will

ultimately identify and implement commitments to help protect and enhance the cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place (FEIR Ch. 3 (DCP.D1.1.00010, pp. 3-162–3-163)). Sec. 4.7 of the Certification (DCP.AA1.2.00001, pp. 16–21) includes detailed descriptions of the Accountability Action Plan and CBP. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-23, A1-50]**

Issue. Appellant alleges that the DCP's mitigation adequacy under CEQA does not guarantee that it has achieved consistency with the Delta Plan and that because the FEIR focuses on CEQA requirements, DWR's DP P2 consistency analysis understates the overall effects on the Delta of the DCP's construction and operation. **[A1-51]**

Response: DP P2 Focuses on Physical Siting of DCP Facilities, Not Operations and Maintenance. Appellant fails to cite any specific authority that would suggest that DP P2 requires consideration of operations and maintenance. Nonetheless, as described in Sec. 5.2 of the Certification under *DP P2* (DCP.AA1.2.00001) and in DP P2 Att. 2 (DCP.AA1.2.00019), substantial evidence in the record supports the conclusion that the DCP—in the context specifically of its operations and maintenance—is consistent with DP P2. DP P2 requires only that a covered action be sited to reduce or avoid conflicts with existing uses when feasible and discussion of mitigation simply functions as substantial evidence supporting the finding that a project has been sited to avoid or reduce conflicts with existing land uses. See Sec. 3.1.1.1, and Sec. 3.3.4.5, *Mitigation Measure Comments with Irrelevant Focus on the FEIR*, regarding the Certification analysis on adequacy of measures. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2 **[A1-51]**

Issue. Appellant alleges that DWR failed to site the DCP in a manner to avoid affecting adjacent existing uses through increased noise risks. **[A1-22, A1-26, A1-49, A1-53]**

Response: Any Increases in Noise and Vibration Will Not Prevent Use of Private and Public Facilities. Substantial increases in noise generation from heavy machinery operating concurrently in a small area may result in conflicts with adjacent uses, such as (hypothetically) a nearby park. The increase in noise generation may not necessarily prevent the park from being accessible, but the increase in noise would likely conflict with the quality of those existing physical uses. DP P2 does not require that a project maintain all existing qualities of a land use but rather that a project avoid or reduce conflicts when feasible. Therefore, the DP P2 analysis in Certification focuses on DWR's determination that the DCP's siting, when feasible, will avoid or reduce such land use conflicts. The substantial evidence in the record for the analysis that any increased noise from implementation of the DCP will not prevent existing uses from occurring is presented in FEIR Ch. 24 (DCP.D1.1.00188). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A1-22, A1-26, A1-49, A1-53]**

Response: DWR Adopted Measures to Address Noise and Vibration Impacts. Noise and vibration impacts are identified and discussed in FEIR Ch. 24 (DCP.D1.1.00188). The Findings of Fact and Statement of Overriding Considerations (DCP.C.1.00001) identifies significant and unavoidable impacts for noise; this is primarily due to DWR's maintaining a conservative approach in the face of uncertainty, and the lack of authority to require private parties to participate in mitigation programs. MM NOI-1 will reduce noise levels through preconstruction actions, sound-level monitoring, best noise control practices, and installation of noise barriers (DCP.D1.1.00188, p. 24-65). The analysis in Ch. 24 acknowledges that some elements of MM NOI-1 rely on voluntary participation of residences (e.g., property owners). The mitigation measure does not solely rely on voluntary relocation to reduce impacts but also includes other methods that will be used to reduce noise levels at affected locations, such as sound insulation, best noise control practices, and installation of temporary sound barriers. In addition, as described in Sec. 3.20, *Ombudsman*, of FEIR Ch. 3 (DCP.D1.1.00010, p. 3-162–3-163), the project ombudsman will be available to address concerns and claims related to noise, potential relocation, as well as concerns related to other resources analyzed in the FEIR. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-22, A1-26, A1-49, A1-53]**

3.1.4.3 Through-Delta Water Conveyance and Delta Levee Network

Issue. Appellant alleges that DWR did not consider an alternative that respects the Delta as an evolving place. **[A1-29, A1-30, A1-31, A1-32, A1-59, A1-WS-8, A1-WS-9]**

Response: While Not Required by DP P2, Many Other Alternatives Were Analyzed. First and foremost, appellant fails to cite any authority that DP P2 requires consideration of alternatives that entail a completely different project than the proposed DCP, such as the "Resilient Water Portfolio" alternative, which most notably focuses on armoring existing Delta levees in lieu of new intakes associated with dual conveyance; appellant misrepresents the requirement under DP P2 for the certifying agency to site water management facilities to avoid or reduce conflicts with existing uses when feasible as a requirement to consider alternatives to the DCP that are fundamentally different in nature. See Sec. 3.12.1.2, *The Coequal Goals Consistency Analysis Does Not Require Analysis of Alternatives to the DCP*, which points to the court ruling in *Tulare Lake, supra,* 115 CalApp.5th at p. 361, which found that a certification of consistency does not serve as an informational document for use by the decision maker in selecting among project alternatives. DWR rejects the premise that the DCP does not respect the Delta as an "evolving place," especially since the term itself recognizes that the region will not be static but rather will change over time. Additionally, appellant fails to confront the evidence that DWR did consider many alternatives to the DCP, many of them substantially different in design and approach than the DCP that was ultimately adopted by DWR. Most notably, DWR analyzed alternatives commonly promulgated by appellant (and other interested parties) of "improving through-Delta

conveyance" or a "portfolio approach" (i.e., options that improve Delta levees and do not include new intakes). For more details on how DWR considered such alternatives thoroughly during the alternatives screening process (FEIR App. 3A (DCP.D1.1.00011)), see Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network*. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-29, A1-30, A1-31, A1-32, A1-59, A1-WS-8, A1-WS-9]**

3.1.4.4 Siting Criteria for Infrastructure Elements

See the following section for responses to comments in A1 that are similar to those in A3: Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*. **[A1-22, A1-28, A1-29, A1-38, A1-55, A1-56, A1-57, A1-60, A1-WS-6, A1-WS-8]**

Issue. Appellant alleges there is no demonstration of avoidance or reduction of conflicts related to the Bethany Complex. **[A1-22, A1-28, A1-29, A1-38, A1-55, A1-56, A1-57, A1-60, A1-WS-6, A1-WS-8]**

Response: DWR Reduced Land Use Conflicts with Siting of the Bethany Complex. DWR explained the constraints in siting the Bethany Complex in DP P2 Att. 1 (DCP.AA1.2.00018). These constraints include identifying a site with acceptable space and topography (i.e., relatively flat with at least 75 acres), compatibility with key hydraulic considerations (i.e., low enough in elevation to allow pump shafts to reach the tunnel), feasible connection to Bethany Reservoir (i.e., avoid penetrating Bethany Reservoir dams and embankments), and connections to tunnels and shafts (i.e., compatible with Lower Roberts Island launch site) (DCP.D4.3.00024, p. D1-3). Specific examples of how DWR sited the Bethany Complex to avoid or minimize conflicts with existing land uses are identified in Table 7 of DP P2 Att. 1 (DCP.AA1.2.00018, pp. 105–107). Thus, substantial evidence demonstrates that conflicts related to the siting of the Bethany Complex were avoided or reduced. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A1-22, A1-28, A1-29, A1-38, A1-55, A1-56, A1-57, A1-60, A1-WS-6, A1-WS-8]**

3.1.4.5 Traffic

See the following sections for responses to comments in A1 that are similar to those in A3: Sec. 3.1.1.13, *Traffic.* **[A1-22, A1-26, A1-49, A1-53]**

Issue. Appellant alleges that the DCP will impact already congested roads and that the Certification does not identify which properties would be affected by moderate or higher levels of congestion. Supplemental responses to those provided for A3 addressing these specific claims from appellant are provided in this section. **[A1-22, A1-26, A1-49, A1-53]**

Response: Any Increases in Traffic Will Not Prevent Use of Private and Public Facilities. The title of DP P2 is "Respect Local *Land Use* When Siting Water or Flood Facilities or Restoring Habitats" (emphasis added). Traffic concerns do not constitute an

appealable DP P2 issue. The FEIR did not identify any land use changes occurring as a result of changes in traffic patterns during construction of the DCP. Furthermore, the FEIR incorporated mitigation to reduce traffic impacts. Even assuming general traffic concerns are relevant to DP P2, "DP P2 does not specify that to adequately reduce a conflict, the siting of the covered action must maintain all existing qualities of a use" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). Furthermore, even if changes in traffic patterns were a DP P2 issue, appellant fails to confront the substantial evidence in the record that under the project only a few additional specific locations within the Delta could have level of service (LOS) exceeding standards (DCP.D1.1.00169; DCP.D1.1.00171) and that DWR will implement MM TRANS-1 to address the effects of increased traffic during construction of the DCP (DCP.C.1.00002). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-22, A1-26, A1-49, A1-53]**

3.1.4.6 Visual Landscape

See the following section for responses to comments in A1 that are similar to those in A3: Sec. 3.1.1.14, *Visual Landscape*. **[A1-48]**

Issue. Specifically, appellant alleges that the DCP will replace scenic farmland with "visually discordant" features and that security lighting would cause glare. Supplemental responses by DWR to these specific claims from appellant are provided in this section. **[A1-48]**

Response: Any Changes in the Visual Landscape Will Not Prevent Use of Private and Public Facilities. Appellant alleges that the DCP is inconsistent with DP P2 because the DCP would replace scenic farmland with "visually discordant" features and security lighting would cause glare. As explained in the FEIR Ch. 18, aesthetic (or visual) resources are objects and features visible on a landscape that contribute to the public's experience and appreciation of the environment (DCP.D1.1.00156, p. 18-4). Similarly visual quality is used to describe what viewers like and disklike about the visual resources that compose a particular scene and is expressed in terms of natural harmony, cultural order, and project site coherence; the value placed on visual resources correlates to whether those resources meet the viewer's preferred concepts of natural harmony and cultural order (DCP.D1.1.00156, p. 18-5). DP P2 does not require that a project maintain all existing qualities of a use, but rather that a project avoid or reduce conflicts when feasible. Therefore, the DP P2 analysis in the Certification focuses on DWR's determination that the DCP's siting, when feasible, will avoid or reduce such land use conflicts. Any change in the visual landscape from the DCP does not prevent adjacent land uses from being used (e.g., residences, agriculture, and public uses such as schools and parks, which were avoided). Appellant fails to demonstrate that there is no substantial evidence in the record to support DWR's finding that the DCP is consistent with DP P2 even if the FEIR identifies effects on the visual landscape within the Delta after implementation of mitigation measures. **[A1-48]**

3.1.4.7 Characterization of Land Use Conflicts in the Record

Issue. Appellant alleges that DWR failed to provide a complete picture of the overall impact of the DCP with respect to DP P2. Appellant alleges that the Certification does not acknowledge the scale of DCP in relation to small Delta communities and the Delta's cultural and recreational resources. **[A1-26, A1-WS-5]**

Response: Certification Provided Detailed Summary of Potential Land Use Conflicts. Appellant alleges that DWR could have presented the DP P2 consistency analysis in an alternative manner but recognizes that much of the information they seek is included in the FEIR. Substantial evidence in the record demonstrates (1) conflicts with existing land uses have been avoided, (2) where a land use conflict has not been avoided altogether, the certifying agency has sited the covered action, "considering specific design elements incorporated into the Project" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 27)) to reduce conflicts, or (3) it is not feasible for the covered action to be sited to avoid or reduce conflicts with existing land uses. As shown in DP P2 Att. 1 (DCP.AA1.2.00018) and DP P2 Att. 2 (DCP.AA1.2.00019), the DCP considered the comments provided to DWR and DCA that were germane to characterizing existing land uses within and around the DCP's footprint and recommendations to avoid or minimize conflicts with these existing land uses. Arguments from appellant suggesting that DWR could have presented its DP P2 analysis differently are insufficient; appellant fails to meet their burden because they do not directly address the substantial evidence relied on by DWR. **[A1-26, A1-WS-5]**

3.1.4.8 Siting of Stockpiles of Reusable Tunnel Material

Issue. Appellant alleges that the siting of stockpiles of reusable tunnel material is inconsistent with DP P2, because of the potential the stockpiles will not be reclaimed and the stockpile footprint would be permanent. Additionally, appellant alleges that there is a DP P2 conflict associated with the farmland that would be affected by the RTM stockpiles. **[A1-28, A1-55]**

Response: RTM Stockpiling Siting. Appellant fails to confront the substantial evidence in the record as it pertains to how DWR has reduced conflicts associated with RTM stockpiling. RTM will be reused by the project to the extent possible (DCP.D1.1.00010, p. 3-32). Furthermore, as stated in the Engineering Project Report Reusable Tunnel Material TM, specifically Sec. 10.4, surplus fill will be made available to local agencies for other uses. DWR is committed to coordinating with local agencies for transfer of RTM for reuse by others. However, the FEIR conservatively assumes the RTM will continue to be stored at RTM storage site given the uncertainty about future use of RTM for other projects. **[A1-28, A1-55]**

The RTM stockpiles will be located in the general areas where it is generated (i.e., along the tunnel corridor). DWR took engineering feasibility and environmental concerns into consideration in RTM siting decisions, as it is a component of the siting consideration for

shaft sites (see Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*, under *Siting of Launch Shaft Sites, Including the Twin Cities Complex, Reduced Conflicts When Feasible*). Even though the RTM stockpiles will be on Important Farmland, their siting is not inconsistent with the requirements under DP P2 (see Sec. 3.1.1.10). Transportation of RTM generated from the tunnel excavation was minimized for traffic and air quality reasons (DCP.D4.1.00023, p. 31); transport of just a portion of RTM stockpiles would require tens of thousands of additional truck trips (DCP.D4.1.00023, p. 32). Where land use conflicts exist and a certifying agency determines based on substantial evidence in the record that the "conflicts cannot be avoided altogether, DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). There is substantial evidence that the RTM stockpiles were sited to reduce conflicts with existing land uses. Arguments suggesting that DWR could have done more to further reduce a land use conflict are insufficient because "DP P2 does not specify that to adequately reduce a conflict, the siting of the covered action must maintain all existing qualities of a use, nor does it specify an extent to which conflict must be reduced" (DCP.AA2.1.00096, p. 36). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-28, A1-55]**

3.1.4.9 Demonstrating Consistency with DP P2

See the following section for responses to comments in A1 that are similar to those in A3: See Sec. 3.1.1.1.

Issue. Specifically, appellant alleges that DWR could have done more to further reduce land use conflicts. **[A1-33, A1-38, A1-56, A1-60, A1-WS-4, A1-WS-5, A1-WS-6]**

Response: Demonstrating Consistency with DP P2. DP P2 does not require consideration of particular design features that would reduce conflicts with existing uses. Substantial evidence in the record demonstrates that, in consideration of specific design elements implemented by DWR, DWR sited the DCP to avoid or reduce conflicts with existing land use where feasible. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A1-33, A1-38, A1-56, A1-60, A1-WS-4, A1-WS-5, A1-WS-6]**

3.1.5 A5—San Francisco Baykeeper et al. (Policy DP P2)

See the following section for responses to comments in A5 that are similar to those in A9: Sec. 3.1.7.5, *Tribal Cultural Resources.* **[A5-30, A5-WS-19, A5-WS-20]**

See the following section for a response to a comment in A5 that is similar to that in A3: Sec. 3.1.1.12, *Recreational Opportunities in the Delta*. **[A5-WS-21]**

See the following section for a response to a comment in A5 that is similar to that in A7: Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility*, under *DWR*

Found That the DCP Not Expected to Cause Substantial, or Even Measurable, Differences in the Frequency or Magnitude of Harmful Algal Blooms. **[A5-WS-21]**

3.1.5.1 Environmental Justice

Issue. Appellant alleges that DWR failed to consider environmental justice concerns in siting elements of the DCP. Appellant alleges that the CBP will fail to address harm to environmental justice communities. **[A5-29, A5-WS-16, A5-WS-17, A5-WS-22]**

Response: Environmental Justice in Itself Is Not a Land Use. Appellant broadly raises concerns claiming that the DCP will affect environmental justice communities but they fail to raise any specific siting issues. Therefore, they fail to raise a DP P2 appealable issue. For example, in the 2021 Lookout Slough determination, the DSC dismissed claims regarding disproportionate impacts and demographic considerations because they did not raise an appealable issue. Specifically, DSC found that "While we recognize that disproportionate impacts are salient concerns, they are not within the scope of DP P2. Therefore, [appellant]'s claim that the Covered Action would have disproportionate impacts on low income people does not raise an appealable issue within the Council's jurisdiction and we dismiss the appeal as to this issue." (Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Program (July 16, 2021), p. 17.) **[A5-29, A5-WS-16]**

Response: DWR Considered Concerns and Input of Environmental Justice Community. Appellant fails to confront the substantial evidence in the record that environmental justice issues were considered during project planning. FEIR Ch. 29, *Environmental Justice* (DCP.D1.1.00200), provides the analysis for determining the potential of the DCP to provide disproportionately high and adverse environmental effects on minority and low-income populations based on Executive Order 12898. DWR used data available from the U.S. Census American Community Survey to identify minority and low-income populations in the study area. The American Community Survey conducts monthly surveys and publishes yearly and 5-year estimates to document changes in communities. DWR engaged with disadvantaged, historically burdened, underrepresented, people of color and low-income communities of interest that may be disproportionately affected by the project—as part of the project's environmental analysis to determine baseline conditions and potential project-related impacts and benefits for the Delta's diverse communities. DWR conducted the *Your Delta, Your Voice* targeted environmental justice community survey from Sep. 20 to Dec. 18, 2020. The environmental justice survey asked respondents to rank their top six priorities for the Delta region. Top-ranked priorities for disadvantaged community respondents were first clean air and drinking water, followed by the natural environment. Levee maintenance and agricultural preservation were ranked third and fourth, respectively. Disadvantaged community respondents commented that issues relating to the natural environment and the unique place and community of the Delta are all connected. Prominent themes for disadvantaged community respondents were the natural environment, which they

connected with their concern for the potential effects of the diversion of water in the Delta and protection of wildlife and fish habitat; and preserving the Delta and community. See Sec. 3.1.1.9, *Sensitive Species Habitat*, regarding the siting considerations made by DWR during project planning to reduce or avoid suitable habitat for special-status species where feasible. Additionally, see Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible*. **[A5-29, A5-WS-16]**

FEIR Ch. 29 (DCP.D1.1.00200) determined that the DCP will have a disproportionately adverse effect on environmental justice communities on issues related to visual effects from construction and operation, air quality emissions, and noise generation. As previously explained in the responses in Sec. 3.1.3.2, *Air Quality*; Sec. 3.1.4.2, *Mitigation Requirements for DP P2 Consistency*, under *Any Increases in Noise and Vibration Will Not Prevent Use of Private and Public Facilities* and *DWR Adopted Measures to Address Noise and Vibration Impacts*; and Sec. 3.1.1.14, *Visual Landscape*, while effects on visual resources, air quality, and noise may result in indirect conflicts with existing land uses, they would not prevent any land uses from continuing. **[A5-29, A5-WS-16, A5-WS-17]**

Contrary to appellant's allegation, DWR's DP P2 analysis did not focus solely on the CBP to demonstrate consistency with DP P2. Rather, based on substantial evidence, DWR determined that, when feasible, the DCP's facilities are sited in such a way to avoid or reduce conflicts with existing land uses while recognizing that a project on the scale of DCP will inevitably conflict with some existing land uses (DCP.AA1.2.00001, pp. 165–166). As explained in Sec. 3.1.1.1, *Demonstrating Consistency with DP P2*, DP P2 does not require mitigation, but the Certification does identify adopted mitigation measures that have the practical effect of avoiding or reducing siting-related conflicts with land uses (DCP.AA1.2.00018, p. 36). The CBP is mentioned in the Certification because it entails a large dedicated $200 million fund to deliver tangible, lasting, and measurable benefits to communities nearest to, and most affected by, project construction activities (DCP.D6.3.00074). The CBP is an example of a specific effort DWR is implementing that will also reduce conflicts with existing land uses when feasible in a manner consistent with DP P2 (DCP.AA1.2.00018, p. 33). The CBP will be implemented separate from, and in addition to, any mitigation identified in the MMRP or pursuant to other environmental statutes and regulations. To describe, memorialize, track, and fulfill its commitments to address effects within the local community during construction of the project, DWR has established an Accountability Action Plan for the project (DCP.D6.5.00002). A core component of DWR's Accountability Action Plan is the Ombudsman Program; an ombudsman will increase effective communication and aid with claims submittals (DCP.D1.1.00010, pp. 3-162–3-163). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A5-29, A5-WS-22]**

3.1.5.2 Demonstrating Consistency with DP P2

Issue. Appellant alleges that the DCP will negatively change existing uses and the character of the Delta. **[A5-WS-23]**

Response: Change in Character Not an Appealable Issue. The broad claim that a project will "negatively" change the character of the Delta is not a DP P2 appealable issue. To comply with DP P2 substantial evidence in the record must demonstrate one of the following (1) conflicts with existing land uses have been avoided, (2) where a land use conflict has not been avoided altogether, the certifying agency has sited the covered action, "considering specific design elements incorporated into the Project[,]" to reduce conflicts (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 27)), or (3) it is not feasible for the covered action to be sited to avoid or reduce conflicts with existing land uses. Substantial evidence in the record demonstrates that, in consideration of specific design elements implemented by DWR, DWR sited the DCP to avoid or reduce conflicts with existing land use where feasible. **[A5-WS-23]**

3.1.6 A8—South Delta Water Agency (Policy DP P2)

See the following section for responses to comments in A8 that are similar to those in A3: Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network*. **[A8-43, A8-47, A8-WS-5]**

3.1.6.1 Sensitive Species Habitat

See the following section for responses to comments in A8 that are similar to those in A3: Sec. 3.1.1.9, *Sensitive Species Habitat*. **[A8-43, A8-44, A8-45, A8-46]**

Issue. More specifically, appellant calls for siting of the DCP facilities away from important wintering areas for Pacific Flyway waterfowl, including sandhill cranes. Appellant suggests that a change in the tunnel alignment (generally a more easterly realignment toward the City of Stockton and a realignment in the southern portion of the alignment near Bethany Reservoir) could achieve fewer wetland impacts. Supplemental responses by DWR to these specific claims are provided below. **[A8-43, A8-44, A8-45, A8-46]**

Response: Siting Considerations Included Avoiding or Reducing Conflicts with Sandhill Cranes for Where Feasible. Sandhill crane habitat (such as roosts) is not a land use in itself, but rather the presence of suitable crane habitat is supported by an existing land use—such as agriculture, open space, and conservation lands. Appellant fails to confront the substantial evidence in the record that DWR reduced or avoided conflicts with sandhill crane habitat during project planning. See Sec. 3.1.1.9 for a summary of substantial evidence that DWR sited the DCP in a manner to avoid or reduce conflicts with special-status species habitat more broadly. Even if sandhill crane roosts were to be considered an existing land use for the purpose of evaluating consistency with DP P2, there will be no permanent impacts on known

permanent roost sites for sandhill crane under the DCP (FEIR Ch. 13 (DCP.D1.1.00112, p. 13-268)). The average flight distance of greater sandhill cranes in the Delta between foraging habitat and roost sites is approximately 1.2 miles (DCP.D3.1.02166, p. 523), and Brown et al. (1987) (DCP.D3.1.02065, p. 131) found that no sandhill crane collisions occurred where distances from power lines to bird-use areas were greater than or equal to 1 mile (DCP.D3.1.02054, p. 50). All proposed new aboveground towers and associated SCADA and transmission lines will be located at least 3 miles or more from the nearest known greater sandhill crane permanent roost sites (DCP.D1.1.00112, p. 13-276). **[A8-43]**

The tunnels will be constructed under known roost sites and modeled foraging habitat for sandhill cranes. The use of tunnel boring machines during construction could potentially cause groundborne vibration in the immediate vicinity of tunnel construction areas. However, because of the depth at which the tunnel will be constructed, and because the deep soil cover over the tunnel will effectively dampen and absorb propagated energy from the tunnel crown and the tunnel floor, no significant noise and vibration effects from the operation of the tunnel boring machine on sandhill cranes are anticipated (FEIR Ch. 24, Sec. 24.3.3, *Impacts and Mitigation Approaches* (DCP.D1.1.00188)). **[A8-43]**

DWR has designed the DCP to minimize lighting and visual effects from traffic to reduce disturbance to sandhill cranes in the vicinity of Stone Lakes NWR. Project-related traffic on Hood-Franklin Road will be limited to shuttles bringing construction employees to and from the intake construction areas and the park-and-ride lot (DCP.D1.1.00112, p. 13-274). Construction truck traffic to serve the intake locations will occur along Lambert Road and a new intake haul road, which will be constructed at ground level along the western toe of the abandoned railroad embankment. The abandoned railroad embankment rises approximately 20 feet above ground level and will serve to reduce light from nighttime truck traffic extending into roosting and foraging habitat within the Stone Lakes NWR (DCP.D1.1.00112, p. 13-274). **[A8-43]**

In addition to the siting considerations identified above, there are other factors of the DCP that will further reduce conflicts with sandhill crane habitat. To avoid disrupting daily flight patterns for sandhill cranes, helicopters will not be used to string power or SCADA lines in the project area located north of SR 4 (DCP.D1.1.00112, p. 13-268). Additionally, construction activities are not expected to injure or kill sandhill crane individuals (DCP.D1.1.00112, p. 13-270). If a bird is present in a region where construction activities are occurring, the bird would be expected to avoid the slow-moving or stationary equipment and move to other areas, as it would move away from any other trucks or farm equipment that could be present within or adjacent to agricultural habitats under existing conditions (DCP.D1.1.00112, p. 13-270). Another consideration is that hazing techniques such as propane cannons and pyrotechnics have been reported to lose their effectiveness as deterrents once individuals are no longer naive to the auditory disturbance, particularly in high-value habitat (DCP.D3.1.02057, pp. 5–6), suggesting that cranes can habituate to sporadic sounds

exceeding ambient conditions that may arise as a result of DCP construction. In conclusion, appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A8-43]**

Response: DCP Designed to Avoid and Minimize Effects on Wetlands. Appellant alleges a change in the tunnel alignment could reduce wetland impacts. Wetlands in themselves are not a land use, rather their existence on a given site may be supported by the existing land use—such as open space or conservation uses. As explained in Sec. 3.1.1.1, *Demonstrating Consistency DP P2*, DP P2 "does not require consideration of particular design features that would reduce conflicts with existing uses" (2022 Determination Regarding C202110 (DCP.AA2.1.00096, p. 36)). For purposes of consistency with DP P2, the question is whether DCP has been sited to avoid or reduce conflicts with existing uses when feasible.

Even assuming wetlands are relevant to a DP P2 siting analysis, appellant fails to confront the substantial evidence in the record that DWR reduced or avoided conflicts with Delta wetland habitat during the siting process. As documented in CER App. C5 (DCP.D4.3.00021, p. C5-7), siting focused on avoiding areas of sensitive habitat. A key design consideration was to reroute and realign facilities to avoid wetlands. As described in CER App. I2, all construction site boundaries were reviewed and adjusted to avoid or minimize effects on wetlands (DCP.D4.3.00045, p. I2-17). Facilities on Lower Roberts Island were realigned to avoid or minimize effects on wetlands (DCP.D4.3.00045, p. I2-17). Similarly, the Bethany Reservoir access road and Bethany Reservoir Aqueduct were realigned to avoid or minimize the effects on wetlands and conservation easement areas (DCP.D4.3.00045, p. I2-17). **[A8-44, A8-45, A8-46]**

While DP P2 does not require mitigation of land use conflicts to demonstrate consistency, there are multiple mitigation measures that directly address appellant's concern of avoiding and minimizing impacts on waterfowl habitat. MM BIO-2a: *Avoid or Minimize Impacts on Special-Status Natural Communities and Special-Status Plants* will reduce impacts on wetland habitats used by wintering waterfowl. Additionally, MM CMP: *Compensatory Mitigation Plan* will offset permanent and temporary loss of freshwater wetlands. MM BIO-33 will minimize impacts on greater and lesser sandhill cranes during their wintering season by limiting construction activities and enhancing foraging habitat by means of unharvested corn fields to maximize food availability to sandhill cranes. Additionally, EC-14: *Construction Best Management Practices for Biological Resources* will ensure that temporarily disturbed areas at Twin Cities Complex, intakes, tunnel shafts and other temporary work areas that provide habitat for greater and lesser sandhill crane are restored (FEIR Ch. 13 (DCP.D1.1.00112, p. 13-269)). See also Sec. 3.3.1.1, *DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan*, specifically under *Agricultural Resources, Terrestrial Resources, and Recreation Mitigation,* which summarizes the substantial evidence that the DWR adopted mitigation measures that are the same as, equal to, or more effective than Delta Plan mitigation measures for terrestrial

biological resources including wetlands. Therefore, substantial evidence demonstrates that DWR sited the DCP to avoid or reduce conflicts with existing uses, such as open space and recreational uses, which include wetland habitats. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A8-44, A8-46]**

3.1.6.2 The Delta as an Evolving Place

See the following sections for responses to comment in A8 that are similar to those in A3: Sec. 3.1.1.8, *Siting Criteria for Instructure Elements*; Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible*; and Sec. 3.1.1.12, *Recreational Opportunities in the Delta*. **[A8-47]**

3.1.7 A9—San Joaquin County et al. (Policy DP P2)

See the following sections for responses to comments in A9 that are similar to those in A3: Sec. Sec. 3.1.1.1, *Demonstrating Consistency with DP P2*; 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood*, Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*; Sec. Sec. 3.1.1.7, *Through-Delta Water Conveyance and Delta Levee Network*; 3.1.1.8, *Siting Criteria for Infrastructure Elements*; and Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible.* **[A9-37, A9-38, A9-39, A9-44, A9-58, A9-59, A9-77, A9-WS-12]**

See the following section for responses to comments in A9 that are similar to those in A1: Sec. 3.1.4.8, *Siting of Stockpiles of Reusable Tunnel Material*, and Sec. 3.3.4.2, *Analysis Meets Delta Plan Mitigation Requirements*, under *Commission's Mapping Does Not Support an Alleged Mitigation Measure Inconsistency*. **[A9-45, A9-46, A9-47, A9-48]**

3.1.7.1 Siting of Programmatic Elements of the Compensatory Mitigation Plan

Issue. Appellant alleges that any conclusions regarding the consistency of the compensatory mitigation aspects of the DCP cannot be supported because specific locations for all aspects of the CMP are not currently defined. Appellant also alleges that DWR did not analyze how implementation of the CMP could affect hydrodynamic changes (specifically residence time) and associated potential for harmful algal blooms. **[A9-37, A9-54, A9-56]**

Response: DWR Provided Siting Considerations for CMP at Adequate Level of Detail. Appellant fails to cite any authority that would suggest that it is improper for DWR to submit its Certification with respect to DP P2, or for the DSC to rule on the Certification. Covered actions under the Delta Plan include not only "projects" (as defined under Public Resources Code section 21065, which is incorporated by reference in the Delta Reform Act), but also plans and programs. Plans and programs may advance certain types of actions to occur in the future, without providing specific location details for individual activities (e.g., the Delta

Plan broadly advocates for ecosystem restoration proposed actions be implemented, but does not specify the exact locations of where such actions must be located). In the Certification for the DCP, DWR identified all the elements of the CMP currently sited at a project-level of detail and provided a thorough description for the framework for siting elements of the CMP currently defined at a program-level (e.g., tidal wetland restoration focused on the North Delta Arc in Solano and Yolo Counties). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-56]**

Response: Record Clearly Identifies Region Where CMP Elements Will Be Targeted. The CMP site selection will be targeted within the same general geography of the project, including along the Sacramento River mainstem, north Delta along Sacramento River tributaries (e.g., Steamboat, Sutter, and Elk Sloughs), lower Yolo Bypass, and the Cache Slough Complex. The FEIR evaluated the potential impact of additional traffic on freeways, highways, and roadways from implementation of the CMP. As described in App. 3F, Sec. 3F.4.3.4, under *Site Selection Criteria and Tools* (DCP.D1.1.00017, p. 3F-72), siting will consider factors such as location of nearby drinking water supply intakes, local hydraulics, source water, and drainages. The results of the FEIR's assessment will be reviewed once the exact location of the restoration actions is determined. The review of the assessment will also take into consideration other restoration projects occurring within the DCP study area. Should it be determined in the future that additional environmental review is required for individual tidal restoration sites, the requirements of CEQA, including disclosure of cumulative impacts, will be included in the appropriate CEQA document. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A9-37, A9-54, A9-56]**

Response: DWR Did Consider the Effects of the CMP on Harmful Algal Blooms. Appellant fails to confront the substantial evidence provided in the record that the implementation of the CMP is not expected to cause substantial cyanobacteria production for several reasons. First, tidal restoration sites will be sited in areas of the North Delta Arc, where conditions are not conductive to harmful algal bloom formation. Second, the design of the tidal habitats is such that there will be daily hydrologic exchange that will ensure that there will not be substantially increased residence time compared to adjacent habitats. Third, if the tidal habitats were to be located in Cache Slough, the mixing gradients and resident time will continue to prevent substantial cyanobacteria production (FEIR Ch. 9 (DCP.D1.1.00064, pp. 9-184–9-185)). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-54]**

3.1.7.2 Community Benefits Program

Issue. Appellant alleges that the CBP will not provide tangible benefits to the Delta community pursuant to requirements under DP P2 and raises concerns that the Community Benefits Agreements (CBAs) currently in place do not address all potential conflicts with

existing uses. Appellant also criticizes the CBA funding availability. **[A9-37, A9-57, A9-WS-12]**

Response: The Community Benefits Program Is Relevant to DP P2 Analysis. This program will provide opportunities for Delta communities to engage and articulate ways the DCP can alleviate potential conflicts with local Delta land uses related to the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The community development opportunities are substantial and will benefit from local insight in the coordinated development and implementation of the program. The CBP provides a mechanism for the Delta community to communicate needs and provide funds for eligible projects that protect and enhance the Delta as an evolving place as described in the Delta Reform Act and Delta Plan. **[A9-37, A9-57]**

The CBP—with a dedicated $200 million fund—will seek to deliver tangible, lasting, and measurable benefits to communities nearest to, and most affected by, project construction activities (DCP.D6.4.00001, p. 1). Appellant alleges that approximately $89 million has been allocated in CBAs but the numbers presented in Table 2 of the A9 written submission are not accurate with respect to the record. The draft agreements in principle in the record total to approximately $42M and include consideration of the north, central, and southern Delta along with programs that extend Delta-wide (DCP.AA2.1.00007–DCP.AA2.1.00014; DCP.AA2.1.00106). The CBP will include community grants (Delta Community Fund), economic development, integrated benefits, and agreements for community-specific projects (CBAs). DWR is currently coordinating with several entities on various CBAs that encompass specific community needs, both large and small. These current draft agreements in principle consider, but are not limited to, a new fire station, replacement of an existing pump station to support agricultural irrigation and residential water needs, development and maintenance of a new trail system, and agricultural and environmental education programs (see Certification Sec. 4.7, *Accountability Action Plan and Public Outreach,* Table 4-1 (DCP.AA1.2.00001) for details on proposed agreements). The CBP was developed with recognition that local communities are best equipped to tailor benefits to their particular needs. Collaborating with local Delta communities in developing the CBP will help address potential conflicts with existing land uses that are of particular importance to the Delta communities. **[A9-57, A9-WS-12]**

Response: CBAs Allow DWR to Meaningfully Engage with Local Agencies in the Delta. DP P2 calls for comments from local agencies to be considered. These CBAs are a way to supplement the grant program, economic development, and integrated benefits elements by providing an opportunity for more targeted collaboration with communities in a manner consistent with DP P2. Participation in CBAs is not seen by DWR as a sign of support for the project and in no way prevents community members' continued ability to oppose the project. Communities or specific groups interested in pursuing CBAs in their own local areas are encouraged to reach out to DWR to collaborate on possible next steps. These CBAs may be

developed with a single entity representing a single geographic location or town, or with an entity representing a larger region, or in combination. Grant screening and scoring criteria will be used to guide discussions with entities seeking CBAs. During these discussions, DWR can help provide technical support to help secure lasting benefits through CBAs. CBA discussions that occur during the planning stage of the DCP may result in an agreement in principle, with a full CBA to be executed subject to the following conditions precedent: (1) Any requisite environmental review under the CEQA for the CBA project; and (2) DWR's issuance of revenue bonds to fund the DCP. CBAs must be finalized in advance of 100% design for all DCP project features, after which time communities can continue to pursue grant funding. **[A9-37, A9-57]**

3.1.7.3 Alternative Locations Evaluated for Intakes

See the following section for responses to comments in A9 that are similar to those in A3: Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*. **[A9-37, A9-42]**

Issue. Appellant alleges an alternative intake location on Sherman Island was dismissed because they claim the risks related to seismicity and sea level rise were overstated; appellant alleges that an intake on Sherman Island would have fewer land use conflicts as compared to the DCP design (e.g., due to a shorter tunnel length). **[A9-43, A9-77]**

Response: DWR Relied on Best Available Science When Considering Design Alternatives. Appellant fails to carry their burden of proving that DWR's Certification is not supported by substantial evidence that best available science was used. Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Documentation of Use of Best Available Science* and *Seismic Hazard,* provides the substantial evidence that DWR relied upon to demonstrate it used best available science for the DCP with regard to considerations of seismicity risks. Sec. 3.2.1.7, *Use and Development of New Information*, under *Climate Change Modeling* provides substantial evidence that DWR relied upon best available science regarding projections of sea level rise. Furthermore, the claims made by appellant regarding seismicity and sea level rise are irrelevant to DWR's findings of consistency with DP P2 because they do not relate to DWR's siting of the intakes to avoid or reduce conflicts with existing land uses. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A9-43]**

Response: Sherman Island Intake Site Had Multiple Concerns and DWR Proposed Intake Location Is Feasible. Substantial evidence supports DWR's conclusion that an intake location on Sherman Island was infeasible. Such a location in the western Delta would increase the risk of delta smelt and longfin smelt exposure to the screens compared to north Delta intake sites (i.e., locations upstream of Sutter Slough), and the intakes must be sited and operated in a manner that would be acceptable to the federal and state fish agencies (DCP.D1.1.00011). DP P2 requires that water management facilities be sited to avoid or reduce land use conflicts when feasible. The claim by appellant that a Sherman Island intake

alternative would have fewer land use conflicts due to a shorter tunnel alignment compared to the DCP is irrelevant because substantial evidence demonstrates that a Sherman Island intake alternative is infeasible. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-43, A9-77]**

3.1.7.4 Visual Landscape and Built Environment

See the following section for responses to comments in A9 that are similar to those in A3 and A1: Sec. 3.1.1.14, *Visual Landscape,* and 3.1.4.6, *Visual Landscape*. The appellant alleges that DWR failed to provide substantial evidence that the impacts to existing visual character, scenic resources, and scenic vistas were reduced via siting. Supplemental responses by DWR to this specific claim from the appellant are provided below. **[A9-38, A9-39, A9-41, A9-62, A9-63, A9-64, A9-65]**

Issue. Appellant alleges that DWR failed to provide substantial evidence that the impacts on existing visual character, scenic resources, and scenic vistas were reduced via siting. **[A9-41, A9-WS-12]**

Response: Any Degradation in the Visual Landscape Will Not Prevent Use of Private and Public Facilities. DP P2 does not require DWR to maintain all existing qualities of existing uses. It only requires that DWR site the DCP to avoid or reduce conflict with existing uses when feasible. Thus, an indirect conflict associated with the visual landscape in the Delta in itself is not an appealable DP P2 issue. Any changes in the visual landscape from the DCP—even if presented in FEIR Ch. 18, *Aesthetics and Visual Resources* (DCP.D1.1.00156), as "significant"—will not prevent any adjacent existing land uses from continuing. **[A9-41]**

As explained in Sec. 3.1.1.1, *Demonstrating Consistency with DP P2,* DP P2 does not require that DWR adopt mitigation to demonstrate consistency with DP P2, but applicable measures DWR has adopted provide additional evidence of DWR's effort to reduce conflicts with adjacent land uses. Relevant mitigation measures adopted by DWR in the enforceable MMRP, such as AES-1a, AES-1b, and AES-1c, will function to reduce the potential impacts on the visual landscape of the Delta associated with construction of the DCP infrastructure (DCP.D1.1.00156, p. 18-128). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-41]**

Response: Facilities Sited to Reduce Conflicts with Built Historical Resources. DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible. Built-environment historical resources are not a land use in themselves, but rather are a resource that is supported by an existing land use type, such as residential or commercial designations. Even if built historical resources were relevant to a DP P2 siting analysis, appellant fails to confront all the substantial evidence that the DCP was sited in a manner to reduce conflicts with the historical built environment when feasible. As explained

in the FEIR, the scale of the DCP and constraints imposed by other environmental resources makes avoidance of all impacts on built-environment historical resources unlikely (DCP.D1.1.00162, p. 19-44). The DCP will affect the fewest eligible built-environment historical resources compared to other alternatives analyzed in the FEIR (DCP.C.1.00001, p. 7-11). While not required under DP P2, the mitigation measures that DWR has adopted further illustrate DWR's efforts to reduce conflicts with built historical resources. These measures include MM CUL-1a: *Avoid Impacts on Built-Environment Historical Resources through Project Design* (DCP.C.1.00002, p. 3-85) and MM CUL-1b: *Prepare and Implement a Built-Environment Treatment Plan in Consultation with Interested Parties* (DCP.C.1.00002, pp. 3-85–3-88). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-41, A9-WS-12]**

3.1.7.5 Tribal Cultural Resources

Issue. Appellant alleges that there is minimal evidence that DWR considered means of avoiding impacts on Tribal cultural resources and the Delta Tribal Cultural Landscape (Delta TCL) through siting, specifically siting of the tunnel. **[A9-39, A9-40, A9-WS-12]**

Response: Consideration and Avoidance of Tribal Cultural Resources and the Delta Tribal Cultural Landscape. Given the expansive nature of the resource and the extensive character-defining features of the Delta TCL, including the Delta as a holistic place, the waterways, the biota, archaeological sites, and views and vistas, it is not possible to site the tunnel, intakes, and other major features to avoid all impacts on Tribal cultural resources and the Delta TCL. Nevertheless, DWR has made substantial efforts to avoid or reduce impacts on these resources. Although general consideration of cultural and Tribal cultural resource impacts are not required by DP P2, which requires avoidance or reduction of conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence through siting when feasible, substantial evidence in the record demonstrates DWR's commitment to avoidance and reduction of impacts on Tribal cultural resources and the Delta TCL through continuing Tribal engagement throughout the design and preparation for construction phases. Contrary to appellant's allegation, the FEIR and the Certification—specifically DP P2 Att. 1 Sec. 3.2, *Efforts to Reduce or Address Siting Conflicts Through Tribal Consultation and Engagement* and Table 7 (DCP.AA1.2.00018)—describe the extensive efforts that DWR made to proactively and meaningfully consult with Tribes through government-to-government consultation to avoid or reduce impacts. Although not expressly required by DP P2, Tribal engagement is an important component of every major project led by the State of California, and DWR has conducted government-to-government consultation with Tribes under two different processes: Public Resources Code section 21080.3.1 and DWR's Tribal Engagement Policy, as described in FEIR Ch. 32, *Tribal Cultural Resources* (DCP.D1.1.00205, p. 32-9). Ch. 32, Sec. 32.1.2.1, *Consultation and Engagement with Tribes*, describes DWR's continuous, multiyear consultation with

Tribes beginning in 2020 and extending to the certification of the FEIR. Additionally, DWR developed a document summarizing the Tribal outreach, engagement, and consultation for the project prior to certification of the FEIR as well as three non-confidential Tribal consultation and coordination summaries, by Tribe, which were submitted for the CPOD hearings (DCP.AA5.1.00016–DCP.AA5.1.00019). DWR invited each Tribe to provide DWR with information about resources of concern, including their location and significance, what impacts might occur from construction and operations activities, and ways that impacts could be avoided or reduced through mitigation (DCP.D1.1.00205, p. 32-12). In some cases, based on Tribal interest, representatives from the project design team were invited to consultation meetings to talk with Tribes about the proximity of mapped archaeological or ethnohistorical locations relative to project features. These discussions informed the design team regarding a range of options for adjusting the design to avoid or reduce the likelihood of affecting such resources, as feasible (pending field verification of the precise location of cultural materials) (DCP.D1.1.00205, p. 32-12). **[A9-39]**

Although consultation under the Public Resources Code section 21080.3.1 concluded prior to certification of the FEIR in late 2023, DWR is continuing coordination with Tribes under its Tribal Engagement Policy (DCP.D3.1.04830). The *Delta Conveyance Project Tribal Coordination Summary* (DCP.AA2.7.00001) describes the development of the *Tribal Cultural Resources Management Plan Part 1: Avoidance Phase* (DCP.X2.1.00017) and the Heritage Resources Management Plan, which were developed in accordance with MM TCR-1b: *Plans for the Management of Tribal Cultural Resources* (DCP.AA2.7.00001). **[A9-39]**

As described in Sec. 3.2 of DP P2 Att. 1 (DCP.AA1.2.00018, pp. 27–29) and in accordance with mitigation measures described in the FEIR and the enforceable MMRP, efforts have been made during planning to identify locations where construction activities have the potential to damage known ethnohistorical or archaeological locations and to assess the feasibility of adjusting the project's locations to avoid physical disturbance of a known ethnohistorical or archaeological location (MM TCR-1a: *Avoidance of Impacts on Tribal Cultural Resources*). As explained in Sec. 3.1.1.1, DP P2 does not require that DWR adopt mitigation to demonstrate consistency with DP P2, but applicable measures DWR has adopted demonstrate DWR's effort to reduce conflicts with adjacent land uses. DWR will conduct preconstruction surveys to verify the extent of character-defining features of the Delta TCL and coordinate with affiliated Tribes and the engineering design team to modify construction activities, facilities, or both to avoid physically disturbing character-defining features of the Delta TCL to the extent feasible or, if complete avoidance is not feasible, to minimize the physical disturbance to the greatest extent feasible. For example, and as mentioned by appellant, access roads related to the intakes are near known mound sites. The design team deemed that relocation of access roads to a safer distance away from the known sites (i.e., changing the location of the roads to avoid physical disturbance) is feasible. **[A9-39, A9-WS-12]**

Furthermore, DP P2 Att. 1, Table 7 (DCP.AA1.2.00018) shows DWR's analysis of the potential conflicts between the DCP's features (e.g., intakes, tunnels, tunnel shafts, Bethany Complex, SCADA, concrete batch plants, roads, and CMP) and Tribal cultural practices (i.e., potential existing land use) and the means by which potential conflicts have been avoided or reduced. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-39, A9-40]**

3.1.7.6 Recreational Opportunities in the Delta

See the following section for a response to a comment in A9 that is similar to that in A3: Sec. 3.1.1.12, *Recreational Opportunities in the Delta*. **[A9-49]**

Issue: Appellant cites to the administrative record and alleges that the following elements of the DCP would interfere with and impair recreation uses: north Delta intakes, RTM stockpiles, Bethany Complex, concrete batch plants, and the CMP. **[A9-50]**

Response: Siting of Intakes Reduced Conflicts with Recreation. Appellant fails to confront all the substantial evidence that DWR reduced conflicts with recreational uses when siting the north Delta intakes. As documented in the FEIR, while shoreline areas currently available to angling will not be available after construction of the north Delta intakes, no documentation indicates these areas receive much, if any, use (DCP.D1.1.00149, p. 16-25). While DP P2 does not require consideration of operations, Sec. 3.1.9.1, *Marina Businesses*, summarizes the substantial evidence that the DCP operations will not conflict with recreational uses associated with boating and access to marinas. In response to SEC input, barge landings were removed in the DCP design to avoid effects on Delta recreational boaters (DCP.D4.3.00045, I2-4). Additionally, although DP P2 does not require the certifying agency to adopt mitigation to demonstrate consistency with DP P2, DWR will implement EC-16: *Provide Notification of Construction and Maintenance Activities in Waterway,* which requires notifications to be provided to agencies and recreational boaters before any in-water construction or maintenance activities occur (DCP.D1.1.00012). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-50]**

Response: Siting of RTM Stockpiles Reduced Conflicts with Recreation. Appellant fails to confront all the substantial evidence that DWR reduced conflicts with recreational uses when siting RTM stockpiles. See Sec. 3.1.4.8, *Siting of Stockpiles of Reusable Tunnel Material*, which summarizes the substantial evidence demonstrating that DWR sited RTM stockpiles to reduce conflicts with existing land uses, including recreation uses. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-50]**

Response: Siting of Bethany Complex Reduced Conflicts with Recreation. Appellant fails to confront all the substantial evidence that DWR reduced conflicts with recreational uses when siting the Bethany Complex. The Certification summarizes the design decisions

that avoided and reduced conflicts with recreational uses (DCP.AA1.2.00018, p. 105). These siting decisions include siting the Bethany Reservoir Pumping Plant and Surge Basin away from the conservation easement areas and the Bethany Reservoir State Recreation Area (DCP.AA1.2.00018, p. 105). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-50]**

Response: Siting of Concrete Batch Plants Reduced Conflicts with Recreation. No direct conflicts with recreational uses were identified in the siting of the concrete batch plants (DCP.AA1.2.00018). The Certification describes the constraints in siting the concrete batch plants, mainly that the batch plants need to be established in locations close to project construction sites because concrete must be placed in the forms within 90 minutes of being loaded onto ready-mix trucks to maintain construction strength and workability (DCP.AA1.2.00018, pp. 21–22). The Bethany Alignment Mapbook in the FEIR shows the location of the Lambert Road Concrete Batch Plant relative to general plan land use designations and how it is not close to any land designated as recreation or open space (DCP.D1.1.00132, p. 2, Sheet 2 of 8). Additionally concrete batch plants will be located within the larger Bethany Complex; see *Siting of Bethany Complex Reduced Conflicts with Recreation* in this section for how the Bethany Complex was sited to reduce conflicts with recreation**.** Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-50]**

Response: Siting of the CMP Elements Considers Conflicts with Uses. See Sec. 3.1.7.1, *Siting of Programmatic Elements of the Compensatory Mitigation Plan*, regarding how the siting of elements of the CMP currently defined at a programmatic level will consider existing uses. Should it be determined in the future that additional environmental review is required for individual tidal restoration sites, the requirements of CEQA, including analysis of recreation impacts, would be addressed in the appropriate CEQA document. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-50]**

3.1.7.7 Traffic

See the following sections for responses to comments in A9 that are similar to those in A3 and A1: Sec. 3.1.1.13 and Sec. 3.1.4.5.

Issue. Appellant alleges that the Certification did not adequately consider impacts on certain road segments that would be subject to damage from DCP-related construction truck traffic. **[A9-51, A9-52, A9-77]**

Response: DWR Will Repave Roads as Part of the DCP. Pavement conditions on existing county and local roads in the project area are predominantly classified as marginal to unacceptable (DCP.D1.1.00010, p. 3-43). As stated in Sec. 3.4.7, *Access Roads*, of FEIR Ch. 3, DWR will conduct preconstruction pavement and roadway analyses of access roadway segments on local and county roads to determine whether the following access roads that are

identified in the conceptual design of the project alternatives need improving: Lambert Road, Dierssen Road, Franklin Boulevard, Twin Cities Road, West Lauffer Road, SR 12, West Lower Jones Road, Bacon Island Road, Bacon and Mandeville Islands farm roads, Blossom Road, West Fyffe Street, West House Road, Lower Roberts Island Road, Western Farms Ranch Road, Clifton Court Road, Byron Highway, Lindemann Road, Mountain House Road, and Kelso Access Road (DCP.D1.1.00010, p. 3-43). DCP road improvement activities will include pavement remediation (e.g., fill potholes, asphalt cracking, and slurry seals), widening to a minimum of 12 feet, roadway design to serve construction traffic with new roads, and constructing new bridges or widening existing bridges (DCP.D1.1.00010, p. 3-43). Additionally, EC-4a: *Develop and Implement Erosion and Sediment Control Plans* requires that paved areas damaged by construction activities be repaved (DCP.C.1.00002, p. 3-118). Furthermore, as described in Sec. 3.20 of FEIR Ch. 3 (DCP.D1.1.00010), the project ombudsman will be available to address concerns and claims of damages resulting from DCP implementation. Claims for DCP construction-related damages can be submitted through the ombudsman for expedient consideration and resolution (DCP.D1.1.00010, p. 3-163). Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A9-51, A9-52, A9-77]**

Issue. Appellant alleges that MM TRANS-1 does not constitute substantial evidence that construction traffic, including traffic carrying workers, would not create conflicts with existing land uses that could feasibly be avoided. Appellant also alleges that segments of the following roads would be impacted by construction of the DCP but are not identified for improvement prior to construction or during postconstruction remediation: Walnut Grove Road, Bonetti Road, Blossom Road, Eight Mile Road, Holt Road, Bacon Island Road, and Clifton Court Road. **[A9-52, A9-53]**

Response: While Not Required by DP P2, the DCP Includes Mitigation to Monitor and Modify Traffic Management Plans. Traffic is not a land use in itself. Even if traffic were relevant to a DP P2 siting analysis, appellant fails to confront the substantial evidence that DWR reduced conflicts with Delta traffic when feasible. Siting a project on the scale of DCP in the Delta will result in additional traffic on Delta roads. DP P2 requires that a covered action be sited to reduce conflict with existing land uses when feasible, not that all conflicts be avoided altogether.

While DP P2 does not require mitigation of land use conflicts, DWR is implementing mitigation for traffic-related effects of the DCP. This mitigation constitutes substantial evidence that DWR has reduced traffic-related land use conflicts consistent with DP P2. While appellant alleges that DWR's approach to mitigation has not considered enforceability and the distribution of construction workers in the area, DWR's transportation analysis in FEIR Ch. 20 took into account that achieving the carpool goal established in MM TRANS-1 is uncertain because construction workers will be drawn from the region in a manner that

may not be conducive to large-scale carpooling or vanpooling (DCP.D1.1.00168, p. 20-40). DWR will be responsible for verifying that the transportation demand management plans (TDMs) and traffic management plans (TMPs) are implemented prior to beginning construction at each project feature. If necessary to minimize unexpected operational and safety related impacts or delays during construction, DWR will also be responsible for modifying the TDMs and/or the TMPs to reduce potential effects identified by the applicable transportation entities throughout the duration of construction (DP P2 Att. 1 (DCP.AA1.2.00018, p. 40)).

Road improvements were identified for each construction site of the DCP (DCP.D4.3.00001, p. 7-2). The results of the traffic analysis were used to identify needed road improvements where forecasted traffic would create a LOS worse than the existing or target projections by the local counties, and if the project construction traffic would increase traffic volume by 10% or more over the forecasted traffic projections without the DCP (DCP.D4.3.00001, p. 7-2); the specific road segments identified by appellant (e.g., Walnut Grove Road) are not ones found by the traffic analysis to be affected according to this standard (DCP.D1.1.00169). Additionally, some of the road segments specifically flagged by appellant as not planned for road improvement under the DCP include those that would have been improved under different alternatives analyzed in the FEIR but not selected (DCP.D1.1.00010). For example, the central alignment alternatives entailed Holt Road improvements, such as new overpass over BNSF tracks (DCP.D1.1.00010, p. 3-74), and the alternatives that would have entailed a new Southern Complex instead of the Bethany Complex included plans for Clifton Court Road improvements (DCP.D1.1.00010, p. 3-45). Thus, appellant may be confusing transportation effects that would occur under different alternatives evaluated in the FEIR, and not the DCP alignment ultimately approved by DWR.

Finally, appellant expresses concerns that additional roads could be affected beyond those analyzed in the FEIR but fails to address the substantial evidence in the record that DWR will enforce the use of specific roadways through construction specifications by means of monitoring and fines (DCP.V1.1.00006, pp. 75–76).

See Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*, under *Definition and Legal Requirements*, for a discussion about DSC's role in adjudicating an appeal under the substantial evidence standard, which is limited to determining whether substantial evidence in the record supports DWR's Certification, not to reweighing record or extra-record evidence to decide who has the better argument. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A9-52, A9-53]**

3.1.8 A2—Courtland Pear Fair (Policy DP P2)

See the following sections for responses to comments in A2 that are similar to those in A3: Sec. 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood*, and Sec. 3.1.1.6, *Alternative Locations Evaluated for Intakes*. **[A2-6, A2-8, A2-16]**

See the following sections for responses to comments in A2 that are similar to those in A9: Sec. 3.1.7.2, *Community Benefits Program*. **[A2-14]**

3.1.8.1 Funding Opportunities for Delta Levees

Issue. Appellant alleges that the DCP is inconsistent with DP P2 because it would negatively affect cultural and economic networks that underly local assessments and political support for levee maintenance in the Delta. **[A2-15]**

Response: Speculative Allegations Related to Levee Funding Not an Appealable Issue. The alleged and speculative claim of interference with state and local levee funding is not an appealable issue. DP P2 requires that water management facilities be sited to avoid or reduce land use conflicts, where feasible. Speculative concerns regarding public and private landowner levee funding does not constitute a conflict with existing uses. **[A2-15]**

Response: State and Federal Funding to Maintain Delta Levees Will Continue. State and federal funding programs to maintain Delta levees were adopted and will continue to be in place regardless of whether the DCP is implemented. Because the DCP will result in a dual conveyance system allowing the SWP to divert water from the north and south Delta, existing levees in the Delta will continue to be an important feature to the SWP if the DCP is constructed. Additionally, the importance of maintaining Delta levees extends beyond the SWP purposes. Therefore, it is expected that funding will still be available to continue to support those local agencies maintaining Delta levees during and following construction of the DCP. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A2-15]**

Response: Construction May Not Begin Until SWP Contractors Enter Contracts or Make Arrangements to Fully Mitigate Impacts on Local Property Tax and Assessments. Some of the land on which publicly owned water conveyance facilities will be constructed is currently held by private owners. Any losses in property tax revenues as a result of the State's acquisition of private lands required to construct the DCP will be offset. California law requires "[f]ull mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities" (Wat. Code, § 85089(b)). Therefore, there will be no effects on local government fiscal conditions resulting from property acquisition**.** Appellant does not raise a DP P2 appealable issue because their claim that the DCP will interfere with funding opportunities for maintaining Delta levees does relate to how water management facilities are sited to avoid or reduce land use conflicts. Appellant fails to

demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A2-15]**

3.1.8.2 Delta Community Events

Issue. Appellant alleges that the DCP is inconsistent with DP P2 because DWR failed to consider Delta community events, such as the Courtland Pear Fair, as part of planning and siting considerations. Appellant raises concerns that the temporary relocation of SR 160 will affect an important transportation corridor, including access to community events such as the Courtland Pear Fair. Appellant also argues that the DCP is inconsistent with DP P2 because there is no draft CBA directed at the Courtland Pear Fear. **[A2-9, A2-10, A2-11, A2-12, A2-13, A2-16, A2-WS-4, A2-WS-6, A2-WS-7, A2-WS-8, A2-WS-12, A2-WS-13]**

Response: DCP Facilities Are Sited Away from Courtland Pear Fair. DP P2 requires that water management facilities be sited to avoid or reduce land use conflicts, when feasible. DWR has demonstrated that it was infeasible to site the DCP facilities to avoid all land use conflicts, and it has shown that facilities were sited to reduce conflicts when feasible. Appellant fails to discuss the substantial evidence supporting DWR's Certification and show that it is not substantial, and so fails to carry their burden of proof. General concern that fair attendance might decrease during construction is not evidence of an inconsistency with DP P2 since DP P2 only asks whether a covered action has been sited to avoid or reduce conflicts with existing uses when feasible. Appellant does not confront the substantial evidence in the record demonstrating that conflicts have been reduced or avoided as required by DP P2. For example, as documented in the record, Intake C (i.e., the intake located over 1 mile south of Hood and the closest DCP intake to Courtland) is sited almost 2 miles away from Courtland, where the Pear Fair is held (DCP.D4.3.00009, p. B6-12). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A2-WS-7, A2-WS-8]**

Response: DWR Actively Engaged with Delta Interested Parties. DP P2 requires DWR to consider comments from local agencies and the DPC, which it did. The Courtland Pear Fair is not a local agency, so any claimed failure to adequately consider comments from the Courtland Pear Fair organizers is not an DP P2 appealable issue. Appellant also fails to confront the substantial evidence that DWR did engage with a wide array of Delta interested parties, including documented attempts to outreach to the Courtland Pear Fair. DWR brought in a specialized team from the non-profit Ag Innovations. They ensure that outreach is consistent and accessible in the Delta and surrounding region and provided through various channels to meet people where they are and in multiples languages, including Spanish and Chinese. They have participated in more than 50 community events, reaching more than 23,000 people, including festivals and farmers' markets. At these events, they engage in conversations, answer questions and provide informational materials. They encourage participation and provide resources for anyone wishing to pursue ongoing awareness. As documented in the record (DCP.AA5.1.00020; DCP.AA5.1.00021), Ag Innovations

submitted a non-profit/special interest group application to have a booth at the Pear Fair to conduct similar outreach; the Pear Fair organizers refused them and responded "Ag Innovations is not welcome at Pear Fair." Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A2-11]**

Response: Access Will Be Maintained. Traffic in itself is not a land use. Even if traffic access to community gathering places were considered an existing land use for the purpose of DP P2, appellant fails to address all the substantial evidence demonstrating the DWR reduced such an effect to the extent feasible. Major road improvements, such as the widening of the existing bridge at Hood-Franklin Road (FEIR Ch. 17 (DCP.D1.1.00154, p. 17-73)), will be incorporated into the DCP to reduce congestion and delays and could benefit Delta businesses even after construction is complete. Access to community gathering places is not likely to be affected because the DCP is designed to avoid road effects or closures, as described in FEIR Ch. 20 (DCP.D1.1.00168). Additionally, construction activities are planned to take place mostly during the day on weekdays, whereas community gathering places generally hold events on weeknights or during the weekend. Construction activities are anticipated to occur for 10 hours a day, Monday through Friday, for most of the construction period. Construction on weekdays will occur during periods when fewer people are recreating, be subject to strict traffic restrictions, and use dedicated haul access roadways to reduce conflicts with tourism and recreation in the areas. Furthermore, EC-18: *Minimize Construction-Related Disturbances to Delta Community Events and Festivals* will be implemented during construction; this EC will require the construction contractor to coordinate with the ombudsman to identify community events and festivals that could be disturbed by construction activity. **[A2-12, A2-13, A2-16, A2-WS-4, A2-WS-12]**

Appellant raises specific concerns regarding the temporary relocation of SR 160. Caltrans will provide oversight for activities related to the SR 160 relocation, as described in the FEIR (DCP.D1.1.00010, p. 3-24). No construction traffic will be allowed on SR 160 between SR 12 and Cosumnes River Boulevard except for realignment of the highway at the intake locations and installation of SCADA cables. In addition, individuals traveling from homes or business would also use the affected routes (DCP.D1.1.00168, p. 20-29). Additionally, as demonstrated in the FEIR, LOS on SR 160 will remain below the county's LOS threshold during construction and operation of the DCP (DCP.D1.1.00169; DCP.D1.1.00171). While not required to address traffic impacts on SR 160 under DP P2, DWR has also adopted MM TRANS-1 to address the effects of increased traffic during construction of the DCP (DCP.C.1.00002). **[A2-WS-7, A2-WS-12]**

Finally, while appellant alleges even a few years of reduced attendance or volunteer relocation can destabilize community events, this allegation does not appear to be supported by recent evidence for the Courtland Pear Fair. The Pear Fair was canceled for two consecutive years in 2020 and 2021 in response to COVID-19, but was able to come back with a successful event in 2022. Moreover, there is no evidence in the record that supports

the allegations that long-standing Delta community events, such as the Courtland Pear Fair, would need to be paused, relocated, or that attendance would be substantially reduced due to the DCP. Appellant fails to demonstrate that substantial evidence does not support DWR's finding that it sited the DCP to avoid or reduce conflicts with existing uses when feasible. **[A2-13, A2-16, A2-WS-12]**

Response: DCP Will Only Have Modest Effects on Agricultural Economics. While appellant alleges the DCP would indirectly affect Delta events such as the Courtland Pear Fair by affecting the Delta agricultural economy and, thereby, affect the availability of local funding to continue such events into the future, this unsupported claim is irrelevant to appellant's burden of showing the record is devoid of substantial evidence supporting DWR's finding of consistency with DP P2. DWR conducted socioeconomic analyses for the DCP, which found only modest effects on agricultural economics of the region. Furthermore, total value of irrigated crop production in the statutory Delta and project area, which is $866 million (DCP.D1.1.00154, p. 17-33), would decline by $4.0 million per year during the construction period relative to existing conditions (DCP.D1.1.00154, p. 17-84). The declines in crop production and acreage are less than 1% relative to existing conditions in the statutory Delta (and surrounding parts of the project area). The analysis of changes in agricultural economics under the DCP focuses on changes in productive irrigated acreage since operational constraints from changes in travel time resulting from construction should be minimal (DCP.D1.1.00154, p. 17-82). Under the DCP, the total loss in value of production specifically associated with orchard and vineyards under the DCP is $2.9 million per year during the construction period relative to a 2020 baseline (DCP.D1.1.00154, Table 17-26). Furthermore, the CBP provides a mechanism for the Delta community to communicate needs and provide funds for eligible projects that protect and enhance the Delta as an evolving place as described in the Delta Reform Act and Delta Plan (DCP.AA1.2.00018, p. 33). Appellant points to the fact that the Certification did not identify a CBA that specifically benefited the Pear Fair. The current draft agreements in principle identified in Table 4-1 of the Certification do not represent the full breath of projects that will be funded by the dedicated $200 million fund. Specific groups interested in pursuing CBAs in their own local areas are encouraged to reach out to DWR to collaborate on possible next steps. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A2-9, A2-10, A2-12, A2-WS-6, A2-WS-8, A2-WS-12, A2-WS-13]**

3.1.9 A4—Steamboat Resort (Policy DP P2)

3.1.9.1 Marina Businesses

Issue. Appellant alleges that the Certification is inconsistent with DP P2 because it did not adequately analyze the effects of construction of the DCP on the marinas, in particular the Steamboat Resort. Appellant alleges that the DCP could result in water level changes that

reduce navigability into Steamboat Slough. Appellant also alleges that the DCP will affect recreation in the Delta by reducing access to the water, impair navigability during low tides, and decrease recreational desirability. **[A4-6, A4-WS-3, A4-WS-7, A4-WS-9, A4-WS-10, A4-WS-11, A4-WS-14]**

Response: Operations Not Appealable Issue and Will Not Affect Boating. The claim by appellant that the DCP will affect water levels in Steamboat Slough (or Delta channels in general) in a manner that reduces access to recreational boaters is speculative and fundamentally does not raise an appealable issue. Delta Plan's regulatory language is focused on analyzing the physical siting of facilities; appellant fails to cite any specific authority that would suggest that DP P2 requires consideration of operations, such as how changes in channel flows could indirectly affect downstream marina uses and water-based recreationists. **[A4-6, A4-WS-3, A4-WS-11]**

Response: Modeling Supports Finding DCP Will Not Conflict with Recreational Use. Although not required to show consistency with DP P2, there is nonetheless substantial evidence in the record to support DWR's finding that the DCP will not conflict with the ability of recreationists to access the water through marinas and boat docks. Analysis found that there is no conflict with marina land use because seasonal flow patterns in the Delta waterways will be slightly different from current conditions, depending on throughputs in dry or wet years, but these changes described in FEIR Ch. 5 (DCP.D1.1.00032), will be within the range of variability that boaters in the Delta waterways experience currently and are not expected to affect recreationists' enjoyment in the various boating recreational opportunities. DSM2 modeling analysis conducted for the DCP operations further shows that changes in the water surface elevations downstream of the north Delta diversions are minimal, particularly in dry water years when water levels are already expected to be lower (FEIR App. 5A, *Modeling Technical Appendix*, Sec. C, Att. 1, *DSM2 Model Results for Existing Condition and Alternatives at 2020* (DCP.D1.1.00042)). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A4-6, A4-WS-9, A4-WS-10, A4-WS-11, A4-WS-14]**

Response: EC-16 Will Reduce Potential Conflicts with Recreation. While DP P2 does not require the certifying agency to identify mitigation measures or ECs, such measures and commitments constitute substantial evidence that DWR has reduced a land use conflict. With respect to recreation uses, DWR will implement measures to reduce potential conflicts with recreation on Delta waterways from construction of the DCP. Per EC-16, notifications will be provided to agencies and recreational boaters before any in-water construction or maintenance activities will occur (FEIR App. 3B, *Environmental Commitments and Best Management Practices* (DCP.D1.1.00012)). Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A4-6, A4-WS-7, A4-WS-9, A4-WS-10, A4-WS-11, A4-WS-14]**

Response: Any Increases in Noise and Vibration Will Not Prevent Marina Use and Recreational Boating. DP P2 does not require that a project maintain all existing qualities of a use but rather that a project avoid or reduce conflicts when feasible. The substantial evidence in the record for the analysis that any increased noise from implementation of the DCP will not prevent existing uses from occurring is presented in FEIR Ch. 24 (DCP.D1.1.00188). Based on the modeling analysis and the EC identified in this section under *Modeling Supports Finding DCP Will Not Conflict with Recreational Use* and *EC-16 Will Reduce Potential Conflicts with Recreation*, there is substantial evidence in the record that the siting of the DCP will not interfere with existing boat ramps or marinas located downstream of the north Delta intakes or impair navigation in the Sacramento River in a manner that will impact nearby marina businesses. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A4-6, A4-WS-7, A4-WS-14]**

3.1.9.2 DP P2 Consistency with the LURMP

Appellant alleges that the Certification does not evaluate consistency with LURMP policies as one of their justifications for an appeal under DP P2. This issue was raised by appellant for the first time in appellant's written submission and is therefore waived (see Sec. 1, *Introduction*, for discussion of written submission requirements). Moreover, see Sec. 3.1.4.1, *DP P2 Consistency with the LURMP*, which explains how actions undertaken by the State are not subject to LURMP policies. **[A4-WS-12]**

3.1.10 A10—DCC Engineering (Policy DP P2)

See the following section for a response to a comment in A10 that is similar to that in A3: Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible.* **[A10-WS-4]**

3.1.10.1 Raw Construction Materials for Reclamation Districts

Issue. Appellant alleges that the DCP is inconsistent with DP P2 because it would place unprecedented demand on construction materials that are also needed by the Delta's Reclamation Districts. **[A10-3, A10-WS-4]**

Response: Effect on Civil Construction Material Demand Is Minimal. DP P2 requires that water conveyance facilities be sited to avoid or reduce conflicts where feasible. It does not require consideration of how DCP would affect market demands on civil construction material (e.g., rock, riprap and aggregate) that may be used by local maintaining agencies for levee repairs. Thus, the DP P2 claim raised by appellant is not an appealable issue. In addition, the record evidence contradicts appellant's claim. DWR analyzed the DCP's impact on the availability of locally important aggregate resources. The aggregate requirements under the DCP—including the percentage of 50-year permitted aggregate amount and percentage of 50-year aggregative demand is 1.38% and 0.65%, respectively (FEIR Ch. 27,

Mineral Resources, Impact MIN-4: *Loss of Availability of Locally Important Aggregate Resources as a Result of the Project* (DCP.D1.1.00198)). The required imported materials will be used over a period of approximately 12 to 14 years, thereby spreading the negligible impact on available aggregate supplies over time. Appellant fails to demonstrate that there is a lack of substantial evidence supporting DWR's determination of consistency with DP P2. **[A10-3]**

Response: Agricultural Economics Minimally Affected. While appellant alleges the DCP would affect the Delta agricultural economy in a manner that would undermine the financial capacity of Local Maintaining Agencies to maintain levees, this unsupported claim is irrelevant to DP P2, which concerns whether the DCP was sited to avoid or reduce conflicts with existing land uses when feasible. Furthermore, DWR conducted socioeconomic analyses for the DCP (FEIR Ch. 17), which found only modest effects on agricultural economics of the region (DCP.D1.1.00154, p. 17-68). Appellant fails to demonstrate that there is a lack of substantial evidence in the record supporting DWR's determination of consistency with DP P2. **[A10-WS-4]**

3.2 G P1 (b)(3) (Best Available Science)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with G P1 (b)(3) and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.2.1 A3—County of Sacramento and SCWA (Policy G P1 (b)(3))

3.2.1.1 Documented Use of Best Available Science and Approach to Analysis

Issue. Appellant broadly alleges that best available science was not used. **[A3-6, A3-26, A3-28, A3-32, A3-40, AS-WS-13, AS-WS-14, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19, AS-WS-28, AS-WS-33]**

Response: DWR's Overall Approach to Using Best Available Science. "Best available science" means the best scientific information and data for informing management and policy decisions. In the context of the Delta Plan, best available science must be consistent with the guidelines and criteria found in Delta Plan App. 1A, *Best Available Science* (DCP.D3.1.00171), which lists six criteria for best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review (Cal. Code Regs., tit. 23, § 5001(g), Appendix 1A) (DCP.AA1.2.00001, p. 169; DCP.AA1.2.00021, p. 1-1). As explained in Delta Plan App. 1A, scientific information comes in numerous forms including independently peer-reviewed publications including scientific journal publications

and books, other scientific reports and publications, science expert opinion, and traditional knowledge. Each of these sources of scientific information may constitute best available science at a given time and contain varying levels of understanding and certainty (DCP.D3.1.00171, p. A1-1). Best available science consists of scientific information available at the time a decision is made. (*Ibid.* [best available science changes over time as new scientific information becomes available]; cf. *San Luis & Delta-Mendota Water Auth. v. Locke* (9th Cir. 2014) 776 F.3d 971, 995 (*San Luis*) ["The purpose of the best available science standard [under the Endangered Species Act (ESA)] is to prevent an agency from basing its action on speculation and surmise. . . . The standard does not, however, require an agency to conduct new tests or make decisions on data that does not yet exist. . . . An agency complies with the best available science standard so long as it does not ignore available studies, even if it disagrees with or discredits them." (citations omitted)]). Furthermore, citing *San Luis,* the DSC has explained that "what constitutes the best available scientific data or assumptions is itself a scientific determination for which . . . [the certifying agency] is owed deference, provided its conclusions are fairly traceable to the record" (DCP.AA2.1.00098, p. 23).

Appellant fails to confront DWR's use of best available science, which is thoroughly documented in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). Ch. 3 of that attachment, *Consistency Findings Common to All Resources and Issues*, examines consistency at an overall level for each of the six best available science criteria; then Ch. 4, *Consistency Findings for Specific Resources and Issues*, and Ch. 5, *Other Resources and Issues*, examine consistency at a resource- or issue-specific level for each of the six criteria. As demonstrated in these chapters, development of the DCP and the analysis of its environmental impacts as required under CEQA relied on a wide range of relevant data, literature, and tools, including hydrologic, groundwater, aquatic resource, and terrestrial biological resource models specific to the Sacramento–San Joaquin Delta and a vast array of Delta-specific information and data. Drawing on scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, noise, and climatology, DWR used scientific information, tools, and methods that are inclusive, objective, and timely to produce effects analyses for the DCP. Thus, substantial evidence in the record supports the Certification finding that DWR used best available science. Appellant fails to demonstrate that the DCP is inconsistent with G P1 (b)(3). **[A3-6, A3-26, A3-28, A3-32, A3-40, AS-WS-13, AS-WS-14, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19, AS-WS-28, AS-WS-33]**

3.2.1.2 Best Available Science Comments with Irrelevant Focus on the FEIR

Issue. Appellant alleges that best available science was not used in the FEIR and frequently bases these allegations on Delta Independent Science Board (DISB) comments on the FEIR. **[A3-26, A3-27, A3-28, A3-29, A3-30, A3-31, A3-40, AS-WS-14, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19]**

Response: Certification Documents the Use of Best Available Science. G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) clearly documents DWR's use of best available science. Appellant raises issues related to the FEIR, rather than information presented in the Certification; fails to cite information in the attachment; and disregards information presented in the *New Information Relevant to Best Available Science* sections. For example, appellant cites DISB comments on the FEIR that were submitted after the FEIR had been certified. These DISB comments made assertions related to topics such as climate change models and methods and impacts on fish and terrestrial species. However, appellant does not relate these comments to the updated modeling and information described in Sec. 4.2, *Hydrologic and Other Water-Related Modeling*, Sec. 4.9, *Fish and Aquatic Resources*, and Sec. 4.18, *Sea Level Rise and Climate Change*, of G P1 (b)(3) Att. 1. The comments made by the DISB on the FEIR largely were duplicative of comments made by the DISB on the DEIR that were addressed in the FEIR in responses to Letter 32 (DCP.D1.1.00241, pp. 1–2), Letter 60 (DCP.D1.1.00241, pp. 2–3), and Letter 534 (DCP.D1.1.00242 pp. 1–492). Additionally, DWR considered the DISB's Sep. 20, 2024, letter, including the cited references in the letter, while preparing its best available science analysis for G P1 (b)(3) Att.1. Appellant's amplification of the DISB's FEIR comments in 2024 via meetings and a Sep. 20 letter does not constitute a challenge relevant to the Certification because it does not make a connection between their assertions and the six criteria in the Delta Plan that define best available science or the new information contained in G P1 (b)(3) Att. 1. **[A3-26, A3-27, A3-28, A3-29, A3-30, A3-31, A3-40, AS-WS-14, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19]**

3.2.1.3 Best Available Science Related to the Compensatory Mitigation Plan

Issue. Appellant alleges that there was high uncertainty due to missing information in the CMP. **[A3-30, AS-WS-18]**

Response: Compensatory Mitigation Plan and Uncertainty. Appellant again comments on the FEIR rather than on the information in the Certification developed for the adaptive management program. These comments include assertions that "Compensatory Mitigation Plan still does not reflect the reality that restoration is not an exact science" and that "the length of monitoring should be based on ecosystem status relative to meaningful targets, rather than set time frames." In contrast, G P1 (b)(4) Att. 2 (DCP.AA1.2.00023) explains how the adaptive management process will be used to meet performance standards and adjust to environmental conditions and how the monitoring frequency will be adjusted to ensure that the project continues to perform as expected after the initial 3-to-5-year establishment period. Thus, substantial evidence in the record supports the Certification finding that DWR used best available science. The Compensatory Mitigation Plan Adaptive Management Plan (CMP AMP) is discussed further in Sec. 3.7.1.1, *G P1 (b)(4) Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty*. **[A3-30, AS-WS-18]**

3.2.1.4 Use of CalSim in Assessing Impacts on Aquatic Species

Issue. Appellant alleges that the CalSim 3 model's monthly timestep is not adequate for evaluation of operational impacts on aquatic species and that a bias is created by the application of a monthly hydrologic model to ecological assessment tools that report results at a finer timestep. **[A3-28]**

Response: Approach to Using CalSim 3 Output in Assessing Impacts on Aquatic Resources. As discussed in FEIR Vol. 2, Ch. 3, *Common Responses*, Common Response 9, *Hydrologic Modeling and Approach* (DCP.D1.1.00230), and FEIR App. 5A, *Modeling Technical Appendix*, Sec. B–Sec. E (DCP.D1.1.00035–DCP.D1.1.00047) CalSim 3 is the hydrologic modeling tool that has been developed by and used by federal, state, and regional water resources and natural resource management agencies throughout California—DWR, U.S. Bureau of Reclamation (Reclamation), Contra Costa Water District, National Marine Fisheries Service (NMFS), USFWS, CDFW, State Water Board, City of Sacramento (Water Plus Project), etc.—as a tool to evaluate changes in operations of their projects and resulting water supply and environmental impacts of those changes. The regulatory agencies (NMFS, USFWS, CDFW, and State Water Board) base their decisions to permit water resource development projects and existing projects proposing changes in operations, frequently in part, based on operational models such as CalSim 3 and secondary models using CalSim 3 as input, including DSM2, HEC-5Q, LTGEN, and SALMOD. These agencies have recognized that CalSim 3 is one of the best available tools to assess water-resource-based impacts in the DCP study area as CalSim 3 model representing the existing condition includes unimpaired inflows and rainfall runoff; agricultural, urban, and wetland demands; return flows; and groundwater recharge from precipitation and irrigation.

Sec. 4.9 of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) provides a discussion of how the best available science was applied to assess the potential impacts of the DCP on aquatic resources. The analyses assess potential project effects on biologically relevant factors that could affect species' survival, such as effects of project operations on Delta hydrodynamics. As further noted in Sec. 4.9, CalSim 3 output is not the single variable considered in the assessment of impacts on aquatic resources. As noted in Sec. B of FEIR App. 5A (DCP.D1.1.00035), certain components of the CalSim 3 model are downscaled to a daily timestep using a day-weighted average based on the total number of days in that month.

Appellant does not identify different models to assess impacts on aquatic resources. Furthermore, as described in Sec. 4.9, as part of the ITP, DWR will provide funding for development and refinement of life cycle models and provide data for life cycle model updates to quantify the effects of DCP construction, operations, and maintenance.

The environmental modeling results reported in the FEIR continued to be updated as a result of project permitting, which involved further coordination between DWR and Reclamation, USFWS, NMFS, State Water Board, and CDFW. Refinements to project operational criteria

have occurred as a result of project permitting, with the suite of analyses being updated to reflect new modeling. In addition to being reflected in permitting documents, the updates have been included in the Feb. 2025 addendum to the FEIR prepared to support DWR's request for an ITP. Refinements to project operational criteria have occurred because of project permitting, with the suite of analyses related to species addressed in the permitting documents being updated to reflect new modeling. Thus, substantial evidence in the record supports the Certification finding that best available science was used in the application of the CalSim 3 model to assess impacts on aquatic species. **[A3-28]**

3.2.1.5 Water Quality as It Relates to Crop Production

Issue. Appellant alleges that the DCP could increase saltwater intrusion into the Delta rendering water unsuitable for crop production. Appellant also alleges that DWR must maintain water quantities and quality for the benefit of Delta users. **[A3-34, AS-WS-21, AS-WS-30]**

Response: Analysis Considered Water Quality Standards for Agricultural Uses. FEIR Ch. 9, *Water Quality* (DCP.D1.1.00064), evaluated the ability of project operations to protect beneficial uses based on adherence to D-1641 water quality standards. As previously discussed in Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility*, the analysis provided in FEIR Ch. 9 shows there is substantial evidence in the record for DWR's findings that operations of the DCP facilities will not result in a substantial change in water quality.

The State Water Board sets the agricultural salinity standards, which are identified in D-1641 (FEIR Ch. 15, *Agricultural Resources* (DCP.D1.1.00133, p. 15-50)). An increase in salinity does not mean those standards will not be met as shown by the exceedance of D-1641 water quality objectives, which are lesser with the ITP conditions than those shown in the FEIR (Exhibit DWR-00110 (DCP.V1.2.00049, Tables 3–6, pp. 25–26,)). Furthermore, any change in the exceedances are driven by modeling anomalies that cannot account for real-time operations (DCP.V1.2.00049, p. 24, lines 1–7).

Regarding the 1981 contract, the record shows that the modeled monthly average EC at the compliance locations is below the contract criteria for every year except above normal years. Furthermore, in above normal years, the modeled frequency of exceeding the 1981 contract criteria is the same under existing conditions as it would be with the DCP (Exhibit DWR-00402 (DCP.V1.2.00114, pp. 32–33, lines 18–22)). The testimony presented by North Delta Water Agency is an improper use of the model because it compares absolute month-by-month differences between the baseline and DCP scenarios. Exhibit DWR-00600 (DCP.V1.2.00219) describes that when presenting model results, statistical comparisons are preferred over absolute differences at specific points in time. In addition, FEIR Ch. 8, *Groundwater* (DCP.D1.1.00060), includes an assessment of constructing and operating the

DCP on groundwater quality. The assessment concludes there will be no adverse impact on groundwater quality. **[A3-34, AS-WS-21, AS-WS-30]**

3.2.1.6 Consistency with the Six Best Available Science Criteria

Issue. Appellant alleges that analyses did not meet the six best available science criteria. **[A3-6, A3-32, A3-33, A3-39, A3-40, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19, AS-WS-20, AS-WS-28, AS-WS-32]**

Response: DWR's Overall Approach to Consistency with Best Available Science Criteria. DWR's use of best available science is thoroughly documented in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). Ch. 3 of that attachment examines consistency at an overall level for each of the six best available science criteria; then Ch. 4 and Ch. 5 examine consistency at a resource- or issue-specific level for each of the six criteria. As demonstrated in these chapters, development of the DCP and the analysis of its environmental impacts as required under CEQA and subsequent regulatory and permitting efforts relied on a wide range of relevant data, literature, and tools, including hydrologic, groundwater, aquatic resource, and terrestrial biological resource models specific to the Sacramento–San Joaquin Delta and a vast array of Delta-specific information and data. Drawing on scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, and climatology, DWR used scientific information, tools, and methods that are inclusive, objective, and timely to produce effects analyses for the DCP. **[A3-6, A3-32, A3-40, AS-WS-16, AS-WS-17, AS-WS-18, AS-WS-19, AS-WS-28, AS-WS-32]**

Response: Peer Review Criterion. In the case of peer review, Sec. 3.8, *Peer Review*, of G P1 (b)(3) Att. 1 and the resource-specific sections in Ch. 4 of that attachment (DCP.AA1.2.00021) clearly describe the substantial evidence in the record that supports DWR's determination that the data, models, and literature used in the project impact analyses are consistent with the peer review criterion. The data, models, literature, and analyses have been subjected to review either as part of the customary practices of scientific publication or as part of legal and regulatory processes. For example, DWR submitted its Section 404 permit application to formally engage the U.S. Army Corps of Engineers (USACE) in early coordination with DWR's CEQA process, undertook a multiyear communication and consultation process with interested Tribes willing to share Tribal knowledge of resources, shared terrestrial models with fish and wildlife agencies and made adjustments to them based on feedback received, and actively engaged with the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), and Bay Area Air Quality Management District (BAAQMD). DWR's active engagement with these air districts included a series of meetings to discuss the project's potential air quality impacts, understand local air quality concerns, confirm analytical methods, identify appropriate mitigation strategies, and explore opportunities for developing additional mitigation in the future within their respective air districts. Specific to arguments related to the noise analysis, sound-level modeling methods used in the analysis have been

thoroughly peer-reviewed by the U.S. Department of Transportation and the International Organization for Standardization, and the preparers completed internal quality review checks and consistency checks, and they underwent an approval process consistent with procedures and directives identified by the Engineer Design Manager and DCA. Similarly, key sources of data and information used in the agricultural resources analysis were peer-reviewed by other (i.e., external) agencies.

In addition, the best available science policy does not dictate that an agency consider only information that has been peer-reviewed. Delta Plan App. 1A (DCP.D3.1.00171) states that other scientific reports and publications, science expert opinion, and traditional knowledge may constitute best available science. As Delta Plan App. 1A explains, there are several sources of scientific information and tradeoffs associated with each. Moreover, CEQA provides for a public comment period and review by other public agencies, which provides an opportunity for independent external review. Thus, an opportunity for peer review of both the DEIR and FEIR is provided pursuant to CEQA. Appellant may prefer a different peer review process; however, while App 1A discusses a "desirable peer review process," it does not mandate that an agency use a specific process for all reports relied on by the agency but rather indicates that formal peer review should be applied "as appropriate." **[A3-6, A3-39, AS-WS-28, AS-WS-32]**

Response: Relevant and Inclusive Science Related to Noise Analysis. Appellant assertions that the noise analysis neglected to address long-term noise fail to challenge specifics of the analysis, such as the finding that "Depending on facility location relative to noise-sensitive receptors, the duration of daytime criteria exceedance would vary from 1 week to up to 14 years on a nonconsecutive basis." As noted in the analysis, exceedances would be nonconsecutive and with mitigation will be reduced to a less-than-significant level if eligible property owners participate in MM NOI-1: *Develop and Implement a Noise Control Plan*. If a property owner does not elect to participate in the sound insulation program, the impact will remain significant and unavoidable. In addition, contrary to appellant's allegation that the noise analysis uses "'unclear and unreasonable' noise monitoring exceedance thresholds," the thresholds of significance are clearly defined in the Sec. 24.3.2, *Thresholds of Significance*, of FEIR Ch. 24, *Noise and Vibration* (DCP.D1.1.00188, pp. 24-27–24-28), and are based on well-established professional sources, such as DWR Standard Specification 05-16 (DCP.D3.1.04516, p. 01570-12, 13) and FTA guidance (DCP.D3.1.04054, pp. 172–186), and Sec. 3.1.4.2, *Mitigation Requirements for DP P2 Consistency,* under *DWR Adopted Measures to Address Noise and Vibration Impacts* and under *Any Increases in Noise and Vibration Will Not Prevent Use of Private and Public Facilities,* provides additional information regarding mitigation that has been adopted to attenuate construction-related noise impacts. **[A3-33, AS-WS-20]**

3.2.1.7 Use and Development of New Information

Issue. Appellant alleges that best available science was not used for several resources or issues, including climate change modeling, aquatic resources, transportation, and noise. **[A3-26, A3-27, A3-28, A3-29, A3-33, A3-38, AS-WS-14, AS-WS-15, AS-WS-16, AS-WS-23, AS-WS-66]**

Response: DWR's Overall Approach to Incorporating New Information. The sections titled *New Information Relevant to Best Available Science* in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) describe new information that will be incorporated into the DCP's ongoing design and development. This new information includes both information and data developed or made available between the time of the FEIR analyses and preparation of the Certification, such as updated modeling with refined project operational criteria using CalSim 3 and DSM2 that was incorporated through exhibits and evidence submitted for the CPOD hearing process, and information that is anticipated as part of future work, such as that gathered during site-specific field investigations. As described further for specific resources, substantial evidence in the record supports DWR's Certification finding that best available science was used in the analyses. **[A3-26, A3-27, A3-28, A3-29, A3-38, AS-WS-14, AS-WS-15, AS-WS-16, AS-WS-23, AS-WS-66]**

Response: Climate Change Modeling. Appellant does not identify available scientific information that DWR failed to consider in the climate change analysis but instead argues that DWR should have developed new model runs that do not exist. As discussed in Sec. 4.18.7, *New Information Relevant to Best Available Science*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), DWR continues to update and adapt its science-based climate change data, tools, and approaches and to update its models to reflect updates to regulatory and operational rules. Most recently, major advancements in climate change analysis were made for the 2023 SWP Delivery Capability Report (DCP.D3.4.00002) and 2025 SWP Adaptation Strategy (DCP.AA2.1.00104). These products build on previous approaches, knowledge, and analysis but deploy the newest earth system models from the Intergovernmental Panel on Climate Change (IPCC), new downscaling methods, updated sea level rise data from National Oceanic and Atmospheric Administration (NOAA) and guidance from the California Ocean Protection Council (OPC), new technical tools, and an updated approach to scenario selection and development. Furthermore, these new products are the first to deploy a new "adjusted historical hydrology" dataset that accounts for climate changes that have already begun to occur and are observable today. All these changes went through independent peer review prior to implementation. **[A3-26, A3-27, AS-WS-14, AS-WS-15, AS-WS-66]**

Response: Aquatic Resources. As discussed in Sec. 4.9.7, *New Information Relevant to Best Available Science*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), newly available information has been developed as part of project permitting, and additional future information derived from future work will include development of additional analyses to

support project permitting. This future work will result in refinement of life cycle models and provide data for life cycle model updates to quantify the effects of project construction, operations, and maintenance. Appellant does not identify available models that DWR failed to consider and, thus, their argument fails for that reason alone. Moreover, consistent with Delta Plan App. 1A (DCP.D3.1.00171), DWR recognizes that modeling will continue to advance and DWR is providing for development and refinement of life cycle models and data for life cycle model updates to quantify the effects of project construction, operations, and maintenance for a suite of models, including Delta Smelt Life Cycle Model, Longfin Smelt Life Cycle Model, Spring-run Chinook Salmon Life Cycle Model, Winter-run Chinook Salmon Life Cycle Model, and White Sturgeon Life Cycle Model. New information for fish and aquatic resources has also been generated as part of the CPOD public hearing for DCP. This information includes consideration of updated modeling related to ITP operational criteria and relevant references published since publication of the FEIR in Dec. 2023 (DCP.V1.1.00268).

See Sec. 3.7.1.1, *Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty*, under *Best Available Science Used in Adaptive Management*, for a discussion of the incorporation of new information about CHABs that follows DSC direction on addressing uncertainty around CHABs in the Delta, as described in Sec. 4.6.7, *New Information Relevant to Best Available Science,* of G P1 (b)(3) Att. 1. Water quality monitoring and evaluation studies (including dissolved oxygen) will also be conducted as required by the DCP ITP (DCP.U1.1.00001) Conditions of Approval (e.g., 10.20.1, 10.20.2).

See Sec. 3.2.1.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Best Available Science*, regarding appellant's failure to address all the evidence relied on by DWR, including evidence discussed in the subsections titled *New Information Relevant to Best Available Science* in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). Also note appellant's repeated DISB's comments on the FEIR (dated Sep. 20, 2025) in their appeal, rather than advancing new arguments. Those comments—including comments regarding dissolved oxygen and organic carbon discussions in FEIR Ch. 9 (DCP.D1.1.00064)—were considered in G P1 (b)(3) Att. 1. **[A3-28, A3-29, AS-WS-14, AS-WS-16]**

Response: Transportation. The assertion that DWR failed to use relevant and inclusive science when analyzing impacts on Delta roadways in its transportation analysis is false, as shown in Sec. 4.14, *Transportation*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). Although transportation impacts under CEQA focus on vehicle miles traveled (VMT) calculations that do not evaluate truck trips for construction, DWR conducted additional analysis to consider the effects of construction-related traffic on roadways (including levee roads) and made design decisions to avoid those effects, as discussed in Sec. 3.1.1.13, *Traffic*, under *While DP P2 Does Not Require Mitigation of Land Use Conflicts, Factors to Reduce Construction-Related Traffic Were Implemented During Early Planning and Design*. In addition, DWR

will conduct preconstruction pavement analysis of access roadway segments (including the Delta areas of Sacramento County) and determine the need to improve these access roads for construction traffic—not limited to only visible pavement conditions—as discussed in Sec. 3.1.1.13 under *While Not Required by DP P2, Certain Delta Roadway Segments to Be Improved*. Regarding mitigation of the DCP's traffic-related effects, see Sec. 3.1.1.13 under *While Not Required by DP P2, Mitigation Reduces or Avoids Traffic-Related Effects*.

Furthermore, evidence in the record supports DWR's determination that its identification of roadway segments for analysis is relevant and inclusive. A total of 120 roadway segments were identified as part of the NOP and Scoping Process in cooperation with Caltrans (66 segments) and local city and county agencies (54 segments)—listed in FEIR App. 20A, *Delta Conveyance 2020 Traffic Analysis* (DCP.D1.1.00169, Table 20A-1), and described in FEIR Vol. 2, Ch. 3, Common Response 14, *Transportation* (DCP.D1.1.00235, pp. 14-4–14-5)—with consideration of estimated truck traffic delivering project materials to and from project features. Appellant's concerns are also addressed in responses to comments 523-12, 523-43, and 523-50 in FEIR Vol. 2, Ch. 4, *Response to Comments Tables,* Table 4-3 (DCP.D1.1.00245).

Although appellant may disagree with the evidence DWR relied on or believe alternative conclusions could be drawn from DWR's evidence, disagreement among experts does not make an analysis inadequate, as discussed in Sec. 3.2.1.8, *Differing Opinions Among Experts*.

Pointing to alternative evidence does not prove that DWR's evidence in the record is not substantial. Appellant fails to cite or discuss the evidence in the record or show that DWR's evidence is not substantial. This failure renders the argument moot, as discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. **[A3-38, AS-WS-23]**

Response: Noise. Allegations about the noise mitigation measure fail to consider the future work that will occur to further refine this measure, which is clearly described in Sec. 4.16.7, *New Information Relevant to Best Available Science*, of G P1 (b)(3) Att. (DCP.AA1.2.00021). Rather than failing to adopt mitigation "at the commencement of construction" as asserted by appellant, the Certification explains that prior to construction, as a part of field investigations, pile testing will be conducted in the vicinity of one of the future intake locations where ground conditions are similar to intake areas. (See the discussion in FEIR Ch. 24 under Impact NOI-1: *Generate a Substantial Temporary or Permanent Increase in Ambient Noise Levels in the Vicinity of the Project in Excess of Standards Established in the Local General Plan or Noise Ordinance, or Applicable Standards of Other Agencies* (DCP.D1.1.00188).) During pile testing, sound-level monitoring will be conducted to measure source sound levels from in-water pile driving. Noise modeling will be updated based on the results of test pile sound-level monitoring. Updated sound-level modeling will be used to determine where impacts on receptors would occur due to pile driving and to

update the construction noise analysis for all facilities, based on daytime and nighttime noise level criteria described in FEIR Ch. 24 (DCP.D1.1.00188, pp. 24-27–24-28). Ch. 24 mitigation measures will address construction- and operation-related noise generated by the DCP. These measures include a sound insulation program, implementing best noise control measures, and installing sound barriers at work areas. The sound insulation program (which will offer improvements such as installation of dual pane windows, new or improved exterior doors, and new HVAC systems to impacted property owners) as well as other commitments to affected property owners described in MM NOI-1 that, if accepted, will reduce noise impacts to a less-than-significant level, will begin prior to construction and will be based on updated modeling. **[A3-33]**

3.2.1.8 Differing Opinions Among Experts

Issue. Appellant alleges that DWR should have used other models or based their analyses on different methods or findings of different scientific papers. **[A3-6, A3-26, A3-31, A3-38, AS-WS-14, AS-WS-19]**

Legal Context. Disagreement among experts does not make an analysis inadequate. (Per 2019 Determination Regarding C20188 (DCP.AA2.1.00098, p. 23), ["disagreement among experts considering the same facts in the record does not establish a lack of substantial evidence in the record"].) Under the substantial evidence standard of review, an appellant cannot prevail by "selectively cull[ing] the administrative record for the bits and pieces that may not support … [the agency, they] must go beyond that, establishing that the evidence in the administrative record is so comprehensively one-sided that the … [agency's] decision was not only against the weight of that evidence, it was a decision so lacking in support that it cannot command the assent of reasonable minds." (*City of Fontana v. California Dep't of Tax & Fee Admin.* (2017) 17 Cal.App.5th 899, 924.) In determining whether substantial evidence supports a finding, the reviewing body "may not reconsider or reevaluate the evidence presented to the administrative agency. All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's findings and decision." (*Securus Techs., LLC v. Pub. Utilities Com.* (2023) 88 Cal.App.5th 787, 802 [internal citations omitted]; *Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 432 [The agency is "free to weigh the evidence before it, and to decide that some evidence was more significant than other evidence. Again, it is the role of the administrative body to weigh conflicting evidence, not ours."].)

Response: Documentation of Use of Best Available Science. Ch. 4, *Consistency Findings for Specific Resources and Issues*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), describes the specific literature, models, or data that are integral to the analysis for each resource and relevant for scrutiny under the best available science criteria. Each section in the chapter discusses the substantial evidence supporting DWR's determination that the literature, models, or data for that resource are consistent with each best available science criterion. Ch. 5, *Other Resources and Issues*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) addresses resource

analyses and issues that use information or methods that may not be fully covered by or included in the scope of the best available science criteria defined in Table 1A-1 of the Delta Plan. **[A3-6]**

Response: Seismic Hazard. Appellant cites DISB comments on the EIR related to the seismic hazard in the Delta; however, as described in Sec. 4.7, *Geology and Seismicity*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), and based on the work of DWR, DCA, and other seismic experts, substantial evidence in the record supports DWR's determination that the geologic and seismic impact analysis included a thorough review of relevant information and analyses across relevant disciplines. As noted in Sec. 4.7.3 of the Certification (DCP.AA1.2.00001), the Delta Risk Management Strategy (DRMS) TM, the DRMS study, the Seismic Hazard Analyses study, and the geology- and seismic-related TMs of the CER were developed by or under the supervision of licensed professional engineers and geologists who conducted their work in keeping with professional standards and practices, recognized engineering principles, and applicable design standards and building codes. In addition, the comment does not dispute that best available science supports the conclusion that Delta levees are vulnerable to earthquake-induced damage or failure. The Delta Plan itself—in Ch. 7, *Reduce Risks to People, Property, and State Interests in the Delta*, as amended in 2024 (DCP.AA2.1.00017, p. 7)—states that levees are threatened by active seismic zones west of the Delta and that "The risks of earthquakes causing levee breaches and island inundations in the Delta have long been recognized." **[A3-26, A3-31, AS-WS-14, AS-WS-19]**

Appellant subsequently contends that if the seismic risk were great, DWR would make existing SWP facilities more reliable. While consideration of other projects is not an appealable issue, appellant's assertion that DWR is not taking actions to improve reliability of SWP facilities is incorrect. See for example the structural measures DWR is taking to address subsidence as part of its SWP adaptation strategies in *DWR Climate Action Plan, Phase III: State Water Project Adaptation Strategy, Reducing Vulnerabilities to Climate Change* (DCP.AA2.1.00104). In addition, as discussed in FEIR Vol. 2, Ch. 3, Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review Issues* (DCP.D1.1.00222), the Delta Reform Act recognizes that new Delta water conveyance infrastructure is needed to address the risks to California's water supplies (Wat. Code, §§ 85004(b), 85020(f)) and requires the Delta Plan to "promote options for new and improved infrastructure relating to the water conveyance in the Delta[,]" among other things (Wat. Code, § 85304). **[AS-WS-19]**

Response: Transportation. Appellant cites comments on the EIR indicating that different methods should have been used for the traffic analysis. However, substantial evidence in the record supports the conclusions by DWR's qualified and experienced transportation experts, including licensed professional engineers and a California-certified professional traffic engineer, that the assessment of transportation-related impacts under CEQA in the FEIR is consistent with G P1 (b)(3). As discussed in Sec. 4.14.1, *Relevance*, and Sec. 4.14.4,

Transparency and Openness, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), the VMT analysis in the EIR—which used travel demand forecasting models developed and reviewed by regional Metropolitan Planning Organizations for the transportation study area—is consistent with guidance provided by the Governor's Office of Planning and Research in its *Technical Advisory on Evaluating Transportation Impacts in CEQA* (DCP.D3.1.04218) and guidance from the California Natural Resources Agency, which requires its use statewide in CEQA analyses. In addition, DWR coordinated with the USACE, state agencies (Caltrans), local agencies (counties and cities), and other interested parties (businesses and residents). Additional details about the experts involved in the transportation analysis, the methods they employed, and how best available science was used in consistency with the Delta Plan are available in Sec. 4.14 of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). **[A3-38]**

3.2.1.9 Impacts on Groundwater Resources in and in the Vicinity of Hood

Issue. Appellant alleges that constructing and operating the DCP will result in significant impact on groundwater in the vicinity of Hood and will substantially affect Hood's public water supply. In addition, appellant alleges that the DCP will also adversely affect production from other domestic wells in the vicinity of the DCP. **[A3-35, A3-36, A3-37, AS-WS-22]**

Response: Use of Best Available Science to Determine Impacts on Groundwater in the Vicinity of Hood. Substantial evidence in the record supports DWR's determination that the DCP's groundwater analysis is consistent with G P1 (b)(3). The groundwater analysis is described in FEIR Ch. 8 (DCP.D1.1.00060) and the supporting appendices: App. 8A, *Delta Groundwater Model: Development and Calibration* (DCP.D1.1.00061); App. 8B, *Impact Analysis: Groundwater Model Results* (DCP.D1.1.00062); and App. 8C, *Groundwater 2040 Analysis* (DCP.D1.1.00063). The scientific information used in the analysis of groundwater-related impacts in FEIR Ch. 8 is based on DWR's critical review and use of engineering data, technical models, and information published by various regulatory agencies, researchers, and consultants.

The groundwater analysis is based on the DeltaGW Model, which is derived from DWR's California Central Valley Simulation Model Fine Grid (C2VSim-FG). The DeltaGW Model has been updated and calibrated with local data, and substantial evidence in the record supports DWR's determination that these data and the DeltaGW Model are the best available for the Delta region (DCP.V1.2.00291).

Application of this best available tool for assessing construction and operational impacts on groundwater resources concludes that the DCP will not result in a significant local or regional impact on the groundwater resources, including altering groundwater quality, as a result of dewatering, operation, or constructing the tunnel. As noted in FEIR Ch. 8 (DCP.D1.1.00060), while the DCP will not result in significant impacts on groundwater, DWR has adopted measures to monitor groundwater levels as well as quality to avoid

unforeseen localized impacts. The allegations regarding impacts on groundwater in the vicinity of Hood are similar to those addressed in Sec. 3.1.1.2, *Reduction of Conflicts in Siting Intakes Near Hood*, and Sec. 3.1.1.8, *Siting Criteria for Infrastructure Elements*. **[A3-35, A3-36, A3-37, AS-WS-22]**

3.2.2 A6—Sacramento Area Sewer District (Policy G P1 (b)(3))

See the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis,* under *DWR's Overall Approach to Using Best Available Science*; Sec. 3.2.1.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Best Available Science*; Sec. 3.2.1.3, *Best Available Science Related to the Compensatory Mitigation Plan*, under *Compensatory Mitigation Plan and Uncertainty*; Sec. 3.2.1.4, *Use of CalSim in Assessing Impacts on Aquatic Species*, under *Approach to Using CalSim 3 Output in Assessing Impacts on Aquatic Resources*; Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*, under *DWR's Overall Approach to Consistency with Best Available Science Criteria* and *Peer Review Criterion*; Sec. 3.2.1.7, *Use and Development of New Information*, under *Climate Change Modeling* and *Aquatic Resources*; and Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Documentation of Use of Best Available Science* and *Seismic Hazard*. **[A6-6, A6-29, A6-30, A6-31, A6-32, A6-33, A6-34, A6-35, A6-36, A6-47, AS-WS-24, AS-WS-28, AS-WS-30]**

3.2.2.1 Differing Opinions Among Experts

Issue. Appellant alleges that the DCP would cause harm and mortality to sandhill cranes. **[A6-43, AS-WS-28]**

Response: Differing Opinions Among Experts on Sandhill Cranes. Substantial evidence in the record supports the Certification finding that best available science was used in the analysis of impacts on sandhill cranes. As discussed under Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Legal Context,* a disagreement among experts does not make an analysis inadequate, and all conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's findings and decision. Also see Sec. 3.2.1.8 under *Documentation of Use of Best Available Science* for a discussion of the literature, models, and data that are integral to the analysis for each resource and relevant for scrutiny under the best available science criteria. See also the discussion in Sec. 3.2.2.2, *Impacts on Harvest Water Program, Sandhill Cranes, and EchoWater,* on how best available science was used to determine that the DCP will not affect the Harvest Water Program. **[A6-43, AS-WS-28]**

3.2.2.2 Impacts on Harvest Water Program, Sandhill Cranes, and EchoWater

Issue. Appellant alleges that impacts on the Harvest Water Program were not considered and that impacts on the Harvest Water Program would impact sandhill cranes. Appellant also

alleges that the EchoWater project was not analyzed and would be negatively affected by the DCP. **[A6-36, A6-38, A6-43, A6-48, AS-WS-28]**

Response: Impacts on Harvest Water Program. Substantial evidence in the record supports the Certification finding that best available science was used to analyze groundwater impacts. G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) documents the suitability of the groundwater analysis conducted for the DCP and its consistency with the six best available science criteria and the substantial evidence in the record indicating that DWR used best available science to address impacts on the Harvest Water Program. As discussed in Sec. 3.1.1.3, *Compatibility with Harvest Water Program*, the DCP will not conflict with the Harvest Water goals or objectives and the effects of the DCP on groundwater and groundwater-dependent ecosystems will be minimal. **[A6-38, A6-43, AS-WS-28]**

Response: Impacts on Sandhill Cranes. Substantial evidence in the record supports the Certification finding that best available science was used to analyze impacts on sandhill cranes, and the four points raised in the appeal (removing foraging habitat, increased sandhill crane collisions, disturbing sandhill cranes, and degradation of sandhill crane habitat) were considered in the analysis. As discussed in FEIR Ch. 13, *Terrestrial Biological Resources* (DCP.D1.1.00112), under Impact BIO-33: *Impacts of the Project on Greater Sandhill Crane and Lesser Sandhill Crane*, the DCP has been designed to avoid death or injury of greater sandhill crane. New overhead project lines within the winter crane use area (approximately north of State Route [SR] 4) will be limited to one 20-meter transmission line on Lower Roberts Island that will be required to connect a new substation to the existing overhead transmission lines. All other project power and SCADA lines within the winter crane use area will be underground or co-located with existing lines. In addition, as discussed in Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *ER PA* (DCP.AA1.2.00001), the CMP will offset the permanent loss of greater sandhill crane (*Antigone canadensis tabida*) roosting habitat by creating roosting habitat on Bouldin Island or in suitable lands that provide connectivity between Stone Lakes NWR and Cosumnes River Preserve, and managing these areas in perpetuity (FEIR Att. 3F.1, *Compensatory Mitigation Design Parameters* (DCP.D1.1.00018, Table 3F.1-3)). The CMP will also offset the loss of greater sandhill crane foraging habitat by protecting high- to very high–value foraging habitat for greater sandhill crane, with at least 80% maintained in very high–value types (corn and rice) in any given year. This foraging habitat will be within 2 miles of new protected roost sites for both subspecies and will be managed in perpetuity. Therefore, substantial evidence in the record indicates that DWR used best available science to address impacts on sandhill cranes. See also the discussion of sandhill cranes in Sec. 3.1.2.5, *Sensitive Species Habitat*. **[A6-43, AS-WS-28]**

Response: Impacts on EchoWater. Substantial evidence in the record supports the Certification finding that best available science was used to determine that the DCP will not negatively affect EchoWater. See Sec. 3.1.2.2*, EchoWater Facilities*, for a description of the

modeling and other best available science documented in the record that were used to determine the DCP will not negatively affect EchoWater. **[A6-36, A6-48]**

3.2.2.3 Impacts on Harmful Algal Blooms

Issue. Appellant alleges DWR's evaluation of the impacts of the DCP on the harmful algal blooms misrepresents the effects the DCP would have on the frequency and extent of this type of water quality event. Appellant argues that DWR should have calculated impacts on harmful algal bloom using a different methodology and "predicts" that developing this new calculation would illustrate increased residence time. **[A6-46, AS-WS-31]**

Response: Impact on Harmful Algal Blooms. Best available science does not "require an agency to conduct new tests or make decisions on data that does not yet exist." (*San Luis*, *supra*, 776 F.3d at p. 995.) Appellant's prediction regarding the potential results of a new test is inadequate to meet their burden of proof. Appellant's argument fails for this reason alone.

Furthermore, the cyanobacteria harmful algal blooms (CHABs) impact analysis in the FEIR evaluated project effects on the five primary environmental factors that are known, based on the scientific literature, to provide favorable conditions for *Microcystis* to outcompete other phytoplankton in the water column of Delta waters: water temperature, water velocity and associated turbulence and mixing, water residence time, nutrients, and water clarity. While inherent limitations are present across all modeled scenarios, DSM2 residence time modeling for the open water areas is useful for understanding general differences in residence time when comparing different scenarios. Thus, DSM2-modeled residence time provides a general indication of whether the project would be expected to increase or decrease residence times within these open waterbodies.

Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility,* also provides additional information regarding how the assessment of the DCP impact on CHABs was conducted and that analysis was based on best available science. **[A6-46, AS-WS-31]**

3.2.2.4 Assessment of Reverse Flows in the Sacramento River

Issue. Appellant alleges that the evaluation of reverse flows in the Sacramento River did not correctly determine the DCP's impact on operation of EchoWater. **[A6-37, AS-WS-26]**

Response: Impact of Reverse Flows in the Sacramento River. The evaluation of reverse flows was conducted using DSM2. The scientific information used in the analysis of water quality impacts in the FEIR was derived from accepted and widely used hydrologic and hydrodynamic models that have been applied for decades to assess impacts of state and federal water supply projects in the Central Valley, peer-reviewed scientific literature specific to the Delta or to physical and chemical processes that occur in the Delta, and agency-led technical reports and studies of the Delta (DCP.AA1.2.00021).

As described in Sec. 5.3.2.2 of FEIR Ch. 5, *Surface Water* (DCP.D1.1.00032), the application of this best available tool for assessing the potential changes in reverse flows included an assessment of the change in the frequency and duration in which reverse flows in the Sacramento River would occur and concluded that the DCP would not be substantially different from baseline conditions. In addition, FEIR Ch. 5 indicates that changes in upstream hydrologic conditions would be more influenced by upstream conditions. Best available science must be consistent with the guidelines and criteria found in Delta Plan App. 1A (DCP.D3.1.00171). As explained in App. 1A, scientific information may originate from independent peer-reviewed publications, including scientific journals publications and books, other scientific reports and publications, and science expert opinion. Best available science "does not require an agency to conduct new tests or make decisions on data that does not yet exist." (*Nat'l Fam. Farm Coal. v. U.S. Env't Prot. Agency* (9th Cir. 2020) 966 F.3d 893, 926 [rejecting that ESA's best available scientific data standard required the U.S. Environmental Protection Agency to generate new data subject to its own uncertainties].) App 1A also provides that best available science changes over time and decisions may need to be revisited as new scientific data becomes available. The claim that DWR should have created a new model run does not establish that the Certification is not supported by best available science. Additional discussion regarding reverse flows is provided in Sec. 3.1.2.2, *EchoWater Facilities*. Sec. 3.1.2.2 also refutes the claim that operation of the DCP would result in an increase in the frequency or duration of reverse flow events in the Sacramento River. **[A6-37, AS-WS-26]**

3.2.2.5 Operational Period Modeling

Issue. Appellant alleges that the hydrologic modeling conducted for the DCP was not properly modeled in that it did not take into consideration the time period when the DCP would be operated. **[A6-44, A6-45]**

Response: Modeling Period Used in Analysis and Updated Assessment Tools. Appellant fails to (1) cite and discuss all the evidence relied on by DWR as described in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021)—particularly in Sec. 4.2, *Hydrologic and Other Water-Related Modeling*—and (2) show that DWR's evidence is not substantial. The failure is fatal, as discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record.* The hydrologic modeling effort for the DCP continues to be updated based on the best available science. Newly available information was developed to incorporate updated climate change hydrology datasets that are now available under the Coupled Model Intercomparison Project Phase 6 (CMIP6). Updated hydrologic inputs for CalSim 3 are from CMIP6-based datasets developed for use in modeling for DWR's 2023 SWP Delivery Capability Report (DCP.D3.4.00002). The updated climate change hydrology used in this modeling was based on the newest earth system models from the Intergovernmental Panel on Climate Change, new downscaling methods, updated sea level rise data from NOAA and

guidance from the California Ocean Protection Council, new technical tools, and an updated approach to scenario selection and development. (DCP.AA1.2.00021, p. 4-8).

As discussed in Sec. 4.2 of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), the updated CalSim 3 modeling conducted for the 2025 SWP Adaptation Strategy also includes updated regulations reflecting the 2024 LTO agreement (per Reclamation's Long-Term Operation of the Central Valley Project and State Water Project Record of Decision), assumed refined Delta outflow criteria under the Agreements to Support Healthy Rivers and Landscapes (also known as Voluntary Agreements), updated Oroville bathymetry, and numerous other CalSim 3 model improvements developed for the 2023 SWP Delivery Capability Report (DCP.D3.4.00002).

Although appellant indicates hydrologic modeling was conducted only for a 2020 scenario, in fact the modeling efforts include future hydrologic scenarios (DCP.AA1.2.00021). As an example, modeling was conducted under 2040 and 2085 climate change conditions, and various water management actions were implemented to address the projected imbalance in 2085 between water supply availability and water demands. These actions include Temporary Urgency Change Orders (TUCOs) (based on actual occurrence in 2014–2015 and 2021–2022), reduced water demands for urban and agriculture uses during dry periods, and limitations on Delta exports when TUCOs were in place and when agricultural demands were reduced.

Substantial evidence in the record supports DWR's determination that the key sources used in the sea level rise and climate change analysis use data sufficient for adequate analyses and applicable to the relevant timeframe (DCP.AA1.2.00021). Analyses based on hydrological modeling mainly focus on 2040 conditions. The modeled 2040 central tendency climate change scenario covers a 30-year period of climate model data (2026–2055). In addition, the 2040 analyses include a scenario with 1.8 feet of sea level rise (H++ scenario) at the San Francisco Bay tide gauge. The H++ scenario, which is considered an "extreme sea level rise scenario for the year 2040" by the OPC, is not anticipated to be likely by current climate models until the 2070–2100 timeframe. Use of this scenario means the climate change and sea level rise assumptions used to model 2040 conditions cover a broader period than the year 2040 and, as such, do not limit evaluations narrowly to 2040. Substantial evidence in the record supports DWR's determination that the key sources used in the sea level rise and climate change analysis used data sufficient for adequate analyses and applicable to the relevant timeframe. Analyses based on hydrological modeling in the EIR mainly focus on 2040 conditions. As described in FEIR Ch. 30, *Climate Change* (DCP.D1.1.00202), and App. 5A*,* Sec. B, Att. 4, *Climate Change Development for Delta Conveyance Project* (DCP.D1.1.00039), the modeled 2040 central tendency climate change scenario covers a 30-year period of climate model data (2026–2055). Sec, 3.2.2.4 provides additional discussion regarding the need for a certifying agency to develop new data.

In conclusion, substantial evidence indicates the hydrologic and climate change analysis is based on the best available science and the time period considered in the overall analysis of hydrologic conditions extends well beyond 2020. **[A6-44, A6-45]**

3.2.3 A7—City of Stockton (Policy G P1 (b)(3))

See the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis,* under *DWR's Overall Approach to Using Best Available Science*; Sec. 3.2.1.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Best Available Science*; Sec. 3.2.1.3, *Best Available Science Related to the Compensatory Mitigation Plan*, under *Compensatory Mitigation Plan and Uncertainty*; Sec. 3.2.1.4, *Use of CalSim in Assessing Impacts on Aquatic Species*, under *Approach to Using CalSim 3 Output in Assessing Impacts on Aquatic Resources*; Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*, under *DWR's Overall Approach to Consistency with Best Available Science Criteria* and *Peer Review Criterion*; Sec. 3.2.1.7, *Use and Development of New Information*, under *Climate Change Modeling* and *Aquatic Resources*; and Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Documentation of Use of Best Available Science* and *Seismic Hazard*. **[A7-6, A7-24, A7-25, A7-26, A7-27, A7-28, A7-29, A7-30, A7-38]**

See the following section for response to comment in A7 that is similar to that in A6: Sec. 3.2.2.5, *Operational Period Modeling*, under *Modeling Period Used in Analysis and Updated Assessment Tools*. **[A7-34]**

3.2.3.1 Water Quality Impacts on the City of Stockton

Issue. Appellant alleges that DWR did not apply best available science when conducting the water quality analysis for the operation of the DCP. Appellant alleges that operation of DCP would limit the City's ability to discharge treated wastewater and thereby restricted to divert water from the Delta for municipal and industrial purposes. Appellant also raises questions regarding the validity of the assessment of harmful algal blooms in south Delta channels. Finally, appellant raises objections to the assessment of bromide and salinity and how those changes would affect the City's operation of drinking water operations. **[A7-31, A7-35, A7-36, A7-37, AS-WS-29, AS-WS-30]**

Response: Analyses Conducted to Address Impacts on South Delta Water Quality. Substantial evidence in the record indicates that DWR used best available science in its analyses of south Delta water quality impacts. FEIR Ch. 9 (DCP.D1.1.00064) evaluated the ability of project operations to protect beneficial uses based on adherence to D-1641 water quality standards (DCP.D1.1.00068–DCP.D1.1.00084). As previously discussed under Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility*, the analysis in FEIR Ch. 9 shows there is substantial evidence in the record for DWR's findings that

operations of the DCP facilities will not change water quality for the City of Stockon in such a manner which will prevent existing uses identified by appellant from persisting. DWR's modeling consistently shows that the DCP operations do not increase bromide at the City of Stockon's intake in a way that would impact municipal supply.

As detailed in FEIR App. 9A, *Screening Analysis* (DCP.D1.1.00065), the water quality impact analysis addresses the potential effects of the project on over 500 constituents and constituent classes monitored in the three primary Delta source waters: Sacramento River, San Joaquin River, and San Francisco Bay. The constituent-specific analyses presented in FEIR Ch. 9 relied, in part, on output from DSM2, which was developed specifically to model Delta hydrodynamics and water quality as discussed in Sec. 4.2, *Hydrologic and Other Water-Related Modeling*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) and in detail in FEIR App. 5A (DCP.D1.1.00033). The constituent-specific analyses relied in part on constituent concentration data for the primary source waters to the Delta: Sacramento River, San Joaquin River, San Francisco Bay, eastside tributaries, Delta agricultural return waters, and Yolo Bypass. This data came from state and federal databases, including DWR's Water Data Library and the U.S. Geological Survey (USGS). Details regarding the data sources are provided in sections titled *Source Water Concentrations* in the FEIR Ch. 9 appendices for each constituent modeled (DCP.D1.1.00068–DCP.D1.1.00084).

The CHABs impact analysis contained in the FEIR evaluated project effects on the five primary environmental factors that are known, based on the scientific literature, to provide favorable conditions for *Microcystis* to outcompete other phytoplankton in the water column of Delta waters: water temperature, water velocity and associated turbulence and mixing, water residence time, nutrients, and water clarity. While inherent limitations are present across all modeled scenarios, DSM2 residence time modeling for the open water areas is useful for understanding general differences in residence time when comparing different scenarios. Thus, DSM2-modeled residence time provides a general indication of whether the project would be expected to increase or decrease residence times within these open waterbodies.

Sec. 3.1.3.1 also provides additional information regarding the water quality concerns, the operation of Stockton's wastewater treatment facilities, and water supply facilities. **[A7-31, A7-35, A7-36, A7-37, AS-WS-29, AS-WS-30]**

3.2.4 A1—Delta Protection Commission (Policy G P1 (b)(3))

3.2.4.1 Documented Use of Best Available Science and Approach to Analysis

Issue. Appellant alleges best available science was not used in the recreation analysis and argues that impacts in the FEIR were underestimated, that the Certification adhered to CEQA requirements rather than Delta Plan policies, did not address informal or undocumented

recreational uses, and that Turner Cut, Tiki Lagoon, and Windmill Cove Marina will be affected. **[A1-14, A1-18, A1-19, A1-20, A1-21, A1-72, A1-76, A1-77, A1-78, A1-79, A1-WS-16**]

Response: DWR's Overall Approach to Using Best Available Science. Appellant alleges that "there is no substantial evidence in the DCP record of recreational use data" to conclude that the project is consistent with G P1 (b)(3). Appellant fails to (1) cite and discuss all the evidence relied on by DWR and (2) show that DWR's evidence is not substantial. This failure is fatal, as discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. Appellant concludes that the "proposed project impacts [were] underestimated in the FEIR" due to data collection for recreation being "not nearly as comprehensive as traffic data." Appellant also alleges for the first time in their written submission that the DCP data collection for recreation was not as comprehensive as in the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project that was "in the same time frame." Because this issue was raised by appellant for the first time in appellant's written submission, it is therefore waived (see Sec. 1, *Introduction*, for discussion of written submission requirements). Moreover, as stated in the Delta Plan, "Best available science is specific to the decision being made and the time frame available for making that decision" (Delta Plan Ch. 2, *The Delta Plan* (DCP.AA2.1.00105, p. 35)). As such, there is no mandate that data collection for each resource area be as comprehensive as that for each other resource area, and certainly not for different covered actions. Furthermore, best available science does not require a certifying agency to create new data, and appellant does not identify additional data that it believes DWR should have used. (*San Luis*, *supra*, 776 F.3d at p. 995; see also *Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 245 ["CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required."].) In addition, Sec. 4.12.1, *Relevance*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) explains that "a field reconnaissance survey was used to verify locations because, due to the coronavirus disease 2019 (COVID-19) pandemic, recent field and survey work was limited and recreation use patterns had not been typical." The field reconnaissance survey was limited only in as much as it focused on supplementing earlier field and survey work that was justifiably limited due to COVID-19. Ultimately, the field reconnaissance survey verified and confirmed the "public access routes and locations, as well as physical evidence of recreation use at dispersed recreation sites" (DCP.AA1.2.00021). See FEIR Att. 16A.2, *Documentation of the Field Reconnaissance on February 2 and 4, 2021* (DCP.D1.1.00152), for documentation of the field reconnaissance survey. **[A1-18, A1-19, A1-21, A1-76, A1-77, A1-79, A1-WS-16]**

Appellant also alleges that "DWR's adherence to CEQA's analytical requirements, rather than the independent substantive requirements of the Delta Plan, resulted in a profound under-documentation of recreational uses and associated impacts." However, this is by its very nature a comment regarding the FEIR and not the Certification because the Certification

itself demonstrates that DWR *did* in fact adhere to the "independent substantive requirements of the Delta Plan." Namely, G P1 (b)(3) Att. 1 is the "Delta Conveyance Project Best Available Science Consistency Analysis" with the Delta Plan. **[A1-20, A1-78]**

Appellant also alleges that DWR's analysis failed to account for "informal recreational activities" and "undocumented uses of closed areas" but does not relate this allegation to Sec. 4.12.2, *Inclusiveness*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), which states that "recreation managers were interviewed to gather information about . . . dispersed or informal use areas." Appellant also alleges DWR "failed to reveal informal recreational activities such as bank fishing, or undocumented uses of closed areas such as Bethany Reservoir." However, FEIR Ch. 16, *Recreation* (DCP.D1.1.00149, Figure 16-2), maps the existing dispersed and informal recreation use areas, including along the Bethany Reservoir (which is outside the Delta); and Sec. 3.3.3 of DP P2 Att. 1 (DCP.AA1.2.00018) incorporates informal recreational activity results from the *Your Delta, Your Voice* survey, which allowed residents to "drag markers onto a map to help identify specific locations in the Delta used for fishing, gathering spots, outdoor activities, businesses or services, and other special places." In all, the survey (FEIR App. 29A, *Environmental Justice Community Survey Report* (DCP.D1.1.00201; DCP.D3.1.03918)) contained input from over 2,000 residents, and participants placed 4,473 map markers, including high quantity of fishing sites (Sec. 3.3.3 of DP P2 Att. 1). **[A1-20, A1-78]**

Appellant also alleges that long-term levee construction activities will affect Turner Cut and Tiki Lagoon Resorts and that construction noise and "activities associated with the construction and use of a rail spur" will result in "major disruptions" to Windmill Cove Marina. Although levee modifications will result in construction noise that could "reduce the quality of daytime boating experiences for boaters" in Turner Cut and Tiki Lagoon, the effects will not be substantial (FEIR Ch. 17, *Socioeconomics* (DCP.D1.1.00154, pp. 17-79)). Modifications will occur on levee landsides and will not directly affect "active recreation use areas" (FEIR Ch. 16 (DCP.D1.1.00149, p. 16-28)). Furthermore, as concluded in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the DCP design features, ECs, and mitigation measures are the same as, equal to, or more effective than applicable Delta Plan mitigation measure elements with regard to impairment or degradation of recreation facilities or activities (Delta Plan MM 18-1) and to increased use resulting in accelerated degradation of recreation facilities or activities (Delta Plan MM 18-2). **[A1-14, A1-20, A1-72, A1-78]**

3.2.4.2 Best Available Science Comments with Irrelevant Focus on the FEIR

Issue. Appellant alleges that best available science was not used in the FEIR for the recreation analysis. **[A1-18, A1-19, A1-20, A1-21, A1-76, A1-77, A1-78, A1-79]**

Response: Certification Documents the Use of Best Available Science. G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) demonstrates that DWR's sources and methods used in the recreation

analysis in FEIR Ch. 16 (DCP.D1.1.00149) are consistent with G P1 (b)(3). For example, in addition to discussing the FEIR findings that the effects of project construction on recreation activities will not be substantial and that project designs will minimize potential effects on recreational opportunities, the Certification describes how the CBP will provide community benefits. The CBP, which has a dedicated $200 million fund (with $100 million targeted for the Delta Community Fund and $10 million for economic development), will ultimately include commitments to help protect and enhance the cultural, recreational, natural resource, and agricultural values of the Delta (see Certification Sec. 4.7, *Accountability Action Plan and Public Outreach*, and 5.2, *Delta Plan Policies Applicable to the Covered Action*, under *G P1 (b)(1)*). Furthermore, see Sec. 3.2.4.1, *Documented Use of Best Available Science and Approach to Analysis*, under *DWR's Overall Approach to Using Best Available Science* for a discussion of the adequacy of evidence in the FEIR, such as that from the field reconnaissance survey, which was used to verify and confirm the public access routes and dispersed recreation sites, and the *Your Delta, Your Voice* survey, especially with regard determining "informal recreational activities" and "undocumented uses of closed areas." **[A1-18, A1-19, A1-20, A1-21, A1-76, A1-77, A1-78, A1-79]**

3.2.4.3 Consistency with the Six Best Available Science Criteria

Issue. Appellant alleges that analysis did not consider best available science in the recreation analysis. **[A1-18, A1-21, A1-76, A1-79]**

Response: DWR's Overall Approach to Consistency with Best Available Science Criteria. Appellant's comments were again based on the FEIR rather than on the information in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). See Sec. 3.2.4.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Best Available Science*, for a discussion of why such comments do not comply with DSC's appeal procedures. Although appellant asserts that "the proposed DCP is inconsistent with G P1 (b)(3) for Delta recreation," they came to this conclusion because they allege "DWR has not considered best available science for identifying and analyzing impacts." In terms of recreation, appellant never mentions the Certification or acknowledges and confronts the evidence in addition to the FEIR that DWR relied on in the Certification, such as the *Your Delta, Your Voice* survey discussed at length in DP P2 Att. 1 Sec. 3.3.3, *Environmental Justice Community Survey* (DCP.AA1.2.00018). Nor does appellant acknowledge or respond to the findings in G P1 (b)(3) Att. 1 relating to the six criteria: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. See Sec. 3.2.4.3, *Consistency with the Six Best Available Science Criteria*, under *DWR's Overall Approach to Using Best Available Science*. **[A1-18, A1-21, A1-76, A1-79]**

3.2.5 A5—San Francisco Baykeeper et al. (Policy G P1 (b)(3))

3.2.5.1 Tribal Cultural Resources

Issue. Appellant alleges that DWR failed to demonstrate application of best available science because it did not analyze or incorporate Tribal input in its analysis of local uses or impacts on the Delta as an evolving place. **[A5-33, A5-WS-40]**

Response: Commitment to Incorporate Tribal Input and Information. The appellant fails to confront the substantial evidence in the record that DWR incorporated Tribal input and information. Since before the 2020 NOP for the DCP (DCP.E.1.00001), DWR has been committed to the consideration of Tribal cultural resources and respectful government-to-government consultation with Tribes, as described in FEIR Ch. 32, *Tribal Cultural Resources* (DCP.D1.1.00205), and its appendices, and demonstrated by the 2016 *Department of Water Resources Tribal Engagement Policy* (DCP.D3.1.04830). Sec. 5.1, *Tribal Cultural Resources*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021) describes DWR's consideration of emerging DSC guidance regarding Tribal justice issues, which include consideration of fair representation, procedures, and distribution or "allocation of resources, material benefits and burdens, risks, and opportunities" (DCP.AA2.10.00045, p. 34). Sec. 5.1 of G P1 (b)(3) Att. 1 also explains the legal criteria and qualitative social science-based framework for the project's Tribal cultural resources assessments, as well as the use of Traditional Knowledge as best available science information. DWR committed to fair and consistent Tribal representation in the identification of Tribal cultural resources and mitigation measures for impacts on such resources. DWR's *Principles for the Identification of Tribal Cultural Resources for the Proposed Delta Conveyance Project*, which is included as FEIR App. 32D, *Principles for the Identification of Tribal Cultural Resources for the Proposed Delta Conveyance Project* (DCP.D1.1.00209), presents DWR's approach and commitment to identifying Tribal cultural resources in consultation with affiliated Tribes and with respectful consideration of Tribes' subject matter expertise and the sensitive nature of Indigenous knowledge (including Tribal Ecological Knowledge). DWR prepared a Heritage Resources Management Plan (HRMP) that integrates management of Tribal cultural resources and other regulated archaeological and historic built-environment resources. The HRMP prioritizes ongoing Tribal engagement and coordination, consideration for Traditional Knowledge, and sensitive management of confidential information. It includes procedures for continuing to develop design-based avoidances for impacts on Tribal cultural resources and for developing appropriate mitigative treatments with engaged Tribes regarding impacts that may not be feasibly avoided, both with consideration of Tribal values regarding the Delta TCL's Indigenous archaeological features. DWR also committed to Tribal representation in the implementation of the project's CMP and collaboration on the development and implementation of mitigation and treatment plans as part of the DCP's planning and design, as described in the DWR Tribal Engagement Policy (DCP.D3.1.04830) and the *Delta Conveyance Project Tribal Cultural Resources Management Plan Part 1: Avoidance Phase*

(DCP.X2.1.00017). This commitment specifically includes consideration and feasible incorporation of Traditional Knowledge into project planning and implementation and DWR's intention to develop Delta Tribes' access to cultural heritage places. In addition, as described in the Certification under G P1 (b)(4) (DCP.AA1.2.00001) and in the G P1 (b)(4) attachments (DCP.AA1.2.00022; DCP.AA1.2.00023; DCP.AA1.2.00024; DCP.AA1.2.00025; DCP.AA1.2.00026), incorporation of Indigenous knowledge is part of the adaptive management process.

See Sec. 3.1.7.5, *Tribal Cultural Resources*, under *Consideration and Avoidance of Tribal Cultural Resources and the Delta Tribal Cultural Landscape*, for more information about DWR's consideration and avoidance of Tribal cultural resources and the Delta TCL, and extensive and ongoing consultation and engagement with Tribes. **[A5-33, A5-WS-40]**

3.2.5.2 Impacts on Harmful Algal Blooms

Issue. Appellant alleges that DWR's evaluation of the impacts of the DCP on the harmful algal blooms misrepresents the effects the DCP would have on the frequency and extent of this type of water quality event. **[A5-28, A5-WS-18]**

Response: Impacts on Harmful Algal Blooms. Appellant fails to cite and discuss all the evidence relied on by DWR as described in Sec. 3.2.2.3, *Impacts on Harmful Algal Blooms,* and Sec. 3.2.3.1, *Water Quality Impacts on City of Stockton,* which describe the modeling and other best available science documented in the record that was used to determine that the DCP would not negatively affect the frequency or duration of harmful algal blooms. **[A5-28, A5-WS-18]**

3.2.5.3 Analysis of Water Demand and Use of Best Available Science

Issue. Appellant alleges DWR did not apply best available science when estimating water demands within the SWP delivery area. **[A5-21, A5-31, A5-32, A5-42, A5-WS-32, A5-WS-33, A5-WS-34, A5-WS-35]**

Response: Determination of Water Demand Is Based on Best Available Science. Appellant fails to cite and discuss all the evidence relied on by DWR, as described in Sec. 3.5.1.2, *Subdivision (a)(1)*, which describes how DWR demonstrated, based on substantial evidence, reduced reliance on Delta water supplies and how this determination was based on best available science. Sec. 3.5.1.2 also describes how water demands and populations are taken into consideration when developing urban water management plans. **[A5-21, A5-31, A5-32, A5-42, A5-WS-32, A5-WS-33, A5-WS-34, A5-WS-35]**

3.2.5.4 Consideration of Increased Reservoir Evaporation Rates

Issue. Appellant alleges DWR did not take into consideration reservoir evaporation rates as part of the hydrologic analysis. **[A5-36, A5-42**]

Response: Reservoir Evaporation Rates Were Incorporated into the Hydrologic Analysis. This allegation is false, and appellant fails to (1) cite and discuss all the evidence relied on by DWR and (2) show that DWR's evidence is not substantial. Sec. 3.2.1.7, *Use and Development of New Information,* describes the best available science in conducting the climate change analysis. In addition, as noted in FEIR App. 5A, Sec. B, *Modeling Technical Appendix—Hydrology and Systems Operations* (DCP.D1.1.00035), historical and perturbed meteorological data were used to estimate future surface water evaporation rates. Historically based reservoir evaporation rates were adjusted for the expected effects of climate change. Appellant's failure to discuss the evidence in the record and show that DWR's evidence is not substantial is fatal, as previously discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. **[A5-36, A5-42]**

3.2.5.5 Hydrologic Modeling and Climate Conditions Expected When the DCP Begins Operation

Issue. Appellant alleges DWR did not base the analysis on correct future climate conditions. Appellant also alleges DWR's assumptions regarding future climate conditions did not properly take into consideration more frequent droughts and was biased based on assumptions regarding more frequent wetter conditions. **[A5-34, A5-35, A5-37, A5-38, A5-42, A5-WS-36, A5-WS-37, A5-WS-38]**

Response: Evaluation of Future Hydrologic Conditions Based on the Best Available Science. Appellant fails to (1) cite and discuss all the evidence relied on by DWR and (2) show that DWR's evidence is not substantial. Sec. 3.2.2.5, *Operational Period Modeled*, describes the best available science when modeling future hydrologic conditions including climate change and updated climate modeling. FEIR App. 5A, Sec. B (DCP.D1.1.00035), demonstrates that best available science was applied when estimating runoff from rim watersheds. This failure to discuss the evidence in the record and show that DWR's evidence is not substantial is fatal, as discussed in Sec. 2.2. Best available science must be consistent with the guidelines and criteria found the Delta Plan App. 1A (DCP.D3.1.00171). As explained in App. 1A, scientific information may originate from independent peer-reviewed publications including scientific journals publications and books, other scientific reports and publications, and science expert opinion and does not require a certifying agency to create new data. App 1A also provides that best available science changes over time and decisions may need to revisited as new scientific data becomes available. The claim that DWR should have created a new model run does not establish that the Certification is not supported by best available science. **[A5-34, A5-35, A5-37, A5-38, A5-42, A5-WS-36, A5-WS-37, A5-WS-38]**

3.2.5.6 Consideration of Hydrologic Conditions Over Life of Project

Issue. Appellant alleges that DWR did not consider hydrologic conditions during the lifetime of the project including conditions in 2070 or beyond. **[A5-39, A5-40, A5-41, A5-42, A5-WS-39]**

Response: 2070 Hydrologic Conditions Were Considered as Part of Future Scenarios. This allegation is false, and appellant fails to (1) cite and discuss all the evidence relied on by DWR and (2) show that DWR's evidence is not substantial. This failure is fatal, as discussed in Sec. 2.2. A discussion of how 2070 climate conditions were addressed using best available science is provided in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). As noted in that discussion, because of a number of complex and interactive factors, predicting conditions past 2070 would not yield information useful to the public or decision makers. Furthermore, FEIR App. 4A, *Consideration of 2070 Conditions* (DCP.D1.1.00029), included assessments of climate change and surface water conditions; temperature, snowpack, and unimpaired runoff; sea level rise; potential changes to water demand; and effects on environmental resources under such a future hydrologic scenario. See Sec. 3.2.5.5, *Hydrologic Modeling and Climate Conditions Expected When the DCP Begins Operation*, regarding use of best available science in estimating future hydrologic conditions when the project becomes operational. In addition, Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*, provides information regarding consistency with Delta outflow standards. **[A5-39, A5-40, A5-41, A5-42, A5-WS-39]**

3.2.5.7 Geotechnical Data, Environmental Analysis, and Best Available Science

Issue. Appellant alleges DWR could not apply best available science to the environmental analysis because of the lack of comprehensive geotechnical data. **[A5-43]**

Response: Environmental Analysis Conducted Using Best Available Science. Appellant fails to (1) cite and discuss all the evidence relied on by DWR as described in and (2) show that DWR's evidence is not substantial. The environmental analysis presented in the FEIR, including the impacts on land use, environmental justice, disadvantaged communities, and endangered fish and wildlife species, fully discloses impacts based on best available science. Sec. 2.5.1, *Geotechnical Activities*, provides an overview of the Certification being supported without delaying the timing of submission for additional geotechnical investigations. As described in Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis*, under *DWR's Overall Approach to Using Best Available Science*, best available science consists of scientific information available at the time a decision is made; best available science does not require DWR to rely on geotechnical data that did not exist at the time DWR filed its Certification. In addition, Sec. 2.5.1, under *Sufficient Detailed Information Available for Certification of Consistency*, explains that detailed information was available to effectively inform DWR's Certification. **[A5-43]**

3.2.6 A8—South Delta Water Agency (Policy G P1 (b)(3))

3.2.6.1 Nonsubstantive Issues (Policy G P1 (b)(3))

Issue. Appellant alleges DWR did not demonstrate that geotechnical borings and cone penetration tests (CPTs) would be properly remediated once borings and testing was completed. **[A8-39, A8-40, A8-41, A8-42]**

Response: DWR Has Demonstrated That Borings and CPTs Will Be Properly Remediated Once Testing Is Complete. Appellant raises nonsubstantive issues and fails to indicate to which policy the issues apply. DWR has thoroughly addressed these issues in the *Written Submission in Support of the Delta Conveyance Project: Final Certification of Consistency for 2024–2026 Proposed Geotechnical Activities (C20242)* (DCP.X2.1.00020) and in particular in Sec. 4.3.1.2 *G P1 (b)(2) Detailed Findings,* which addresses how borings will be sealed after testing is completed. **[A8-39, A8-40, A8-41, A8-42]**

3.2.7 A9—San Joaquin County et al. (Policy G P1 (b)(3))

3.2.7.1 Documented Use of Best Available Science and Approach to Analysis

Issue. Appellant alleges DWR failed to demonstrate application of best available science and did not provide adequate documentation establishing that best available science has been or will be used. Appellant also alleges DWR restricted the analyses to topics addressed in the FEIR. **[A9-6, A9-21, A9-22]**

Response: Best Available Science Is Used in the Analyses. Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis*, and Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*, describe how G P1 (b)(3) Att. 1 clearly documents DWR's use of best available science and how that documented approach was consistent with each of the six best available science criteria.

In regard to the topics addressed in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), appellant does not indicate what additional topics should have been addressed. Furthermore, appellant fails to acknowledge the foodweb and social sciences analyses (Sec. 5.3, *Foodwebs*, and Sec. 5.5, *Social Science*, of G P1 (b)(3) Att. 1), which examine issues across resources specifically for the Delta Plan consistency. For these reasons, appellant fails to confront all the evidence relied on by DWR and show why it is not substantial. **[A9-6, A9-21, A9-22]**

3.2.7.2 Comments from the Delta Independent Science Board

Issue. Appellant alleges DWR failed to address DISB comments made on the FEIR. **[A9-6, A9-23]**

Response: DISB Comments Addressed or Fail to Consider Information Presented in the Certification. As discussed in response to A3 in Sec. 3.2.1.2, *Best Available Science*

Comments with Irrelevant Focus on the FEIR, the comments made by the DISB on the FEIR largely were duplicative of comments made by the DISB on the DEIR that were addressed in FEIR Vol. 2, Ch. 4, in responses to Letters 32, 60, and 534 (DCP.D1.1.00241; DCP.D1.1.00242). Additionally, DWR considered the DISB's Sep. 20, 2024, letter (DCP.AA5.1.00001), including the cited references in the letter, while preparing its best available science analysis for G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). In addition, appellant disregards information presented in the *New Information Relevant to Best Available Science* sections. For example, appellant cited DISB comments on the FEIR that were submitted after the FEIR had been certified. These DISB comments made assertions related to topics such as climate change models and methods and impacts on fish and terrestrial species. However, appellant did not relate these comments to the updated modeling and information described in Sec. 4.2, *Hydrologic and Other Water-Related Modeling*, Sec. 4.9, *Fish and Aquatic Resources*, and Sec. 4.18, *Sea Level Rise and Climate Change*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). **[A9-6, A9-23]**

3.2.7.3 Use of Best Available Science to Address the Golden Mussel (*Limnoperna fortunei*)

Issue. Appellant alleges DWR wrongly omitted the golden mussel (*Limnoperna fortune*) from any best available science consideration. **[A9-5, A9-14, A9-24, A9-31, A9-34, A9-WS-2, A9-WS-6]**

Response: Best Available Science Is Used to Address Nonnative Invasive Species. Best available science is integral to DWR's overall approach to addressing invasive species, including golden mussel. As described in Sec. 3.6.2.1, *Golden Mussel (*Limnoperna fortunei*) Management at Project Facilities Through State- and Department-Wide Invasive Species Programs*, DWR is committed to managing invasive aquatic species. DWR is using best available science to address invasive species and the golden mussel in particular. These responses describe DWR's monitoring and data collection and the methods for prevention, containment, and population suppression, and eradication methods of mussels. Also see Sec. 3.3.5.2, *DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan*, under *Mitigation to Address Invasive Species, Particularly Golden Mussel*, which explains that G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) describes the DCP's mitigation measures, project design features, and ECs that are equal to or better than the Delta Plan's mitigation measures, including Delta Plan MM 4-1 (strategies associated with invasive species management including 4-1(e)). **[A9-24, A9-31, A9-34]**

In addition, DWR's record details infrastructure cleaning to prevent biofouling. The CER (DCP.D4.3.00001, p. 4-12) explains that cylindrical tee screen systems will be inspected and maintained on a regular basis to preserve functionality, including manual cleaning of screens and baffle assemblies; sediment buildup reduction; baffle plate adjustment; and screen unit adjustment. Screen and panel cleaning will be required to remove algae growth, freshwater sponges, freshwater snails, and other biogrowth that are not cleaned by the automatic

cleaning system or populate on the inside or back of the various panels and screens. This activity will be conducted from the top deck of the intake structure approximately every 3 to 6 months when the river depth is low enough to prevent flow into the structure as solid panels are moved to the center guide slot. Cleaning will be conducted before substantial biofouling is present.

Related to appellant's statement that "research is needed to determine what the effects of the reduction of sediment, changes in sediment loads, and turbidity," the Sediment Monitoring AMP (G P1 (b)(4) Att. 5 (DCP.AA1.2.00026)) will meet the requirements of EC-15: *Sediment Monitoring, Modeling, and Reintroduction Adaptive Management*. EC-15 will include multiyear monitoring and estimation of sediment entrainment during initial operations following north Delta diversion construction, monitoring and modeling of potential effects relative to performance criteria based on the sediment entrainment estimates, and development and implementation of a sediment reintroduction plan should performance criteria be exceeded (DCP.AA1.2.00001, p. 179). Finally, in relation to appellant's allegation of algal species, DCP ITP Condition of Approval 11.19 (DCP.AA1.2.00001, p. 157) states "[DWR] shall conduct Covered Activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.) from one Project construction site and/or water body to another. … [DWR] shall not reintroduce any removed invasive aquatic plant species or parts thereof into waters of the State." **[A9-31]**

Regarding the allegation that the DCP would have "profound effects on golden mussels," Sec. 3.6.1.1, *Consideration of Golden Mussel (*Limnoperna fortunei*)*, under *Nonnative Invasive Species, Including Golden Mussel, Fully Considered,* explains that DWR actively participates in various multiagency and statewide efforts with the same goals of managing the treatment of invasive nonnative species, as threats develop, like the Golden Mussel Task Force described in the *State- and Department-Wide Invasive Species Programs* section of the Certification (DCP.AA1.2.00001, pp. 159–160). The Certification ER P5 section titled *Covered Action Permit Requirements That Avoid and Mitigate the Potential for New Introductions of or Improved Habitat for Nonnative Invasive Species* (DCP.AA1.2.00001, pp. 156–159) refers to DCP ITP (DCP.U1.1.00001) Condition of Approval 11.19. Condition of Approval 11.19 explains that "[DWR] shall inspect all equipment, including marine vessels, used for construction and habitat creation, enhancement, and management for invasive terrestrial and aquatic plant and animal species prior to entering work areas, when moving from one work area to another, and when entering Covered Species terrestrial and aquatic habitats," which is consistent with *Golden Mussel Response Framework* Objective 3—Prevention at Uninfested Waters (DCP.AA2.1.00072, p. 10). **[A9-5, A9-14, A9-WS-2, A9-WS-6]**

3.2.7.4 Use of Best of Available Science in the Recreation Analysis

See the following section for responses to comments in A9 that are similar to those in A3: Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis,* under *DWR's Overall Approach to Using Best Available Science*. **[A9-6, A9-32, A9-33, A9-34]**

Issue. Specifically, appellant alleges best available science was not used in recreation analysis and that DWR failed to show substantial evidence in the record that impacts on recreation were assessed using best available science. Appellant also alleges adverse impacts on recreational activities that rely on SR 160 and SR 12 are not addressed, the field reconnaissance was limited, the recreation analysis is flawed by comparison to analysis of other resource areas, and the CEQA impact approach resulted in an under-documentation of recreational uses and associated impacts. **[A9-6, A9-32, A9-33, A9-34]**

Response: Best Available Science Is Used in the Analysis. Appellant alleges adverse impacts on recreational activities "that rely on the roads and highways for part of the visitor experience are not addressed," and "there is no substantial evidence on the record of recreational use data to support the conclusion that the project either does not impact recreation significantly or that it is consistent with G P1 (b)(3)." See Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*, under *Definition and Legal Requirements* for a discussion of why appellant fails to meet their burden. Appellant must demonstrate that there is no substantial evidence in the record to support the agency's decision and not put forth "merely evidence supporting its position." (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1072.)

Regarding recreational activities that rely on SR 160 and SR 12, as demonstrated in FEIR Ch. 16, the evaluation of potential effects on recreation for sightseeing purposes included SR 160 and SR 12 in the study area (DCP.D1.1.00149, p. 16-13). Also see Ch. 18, *Aesthetics and Visual Resources* (DCP.D1.1.00156), for an analysis of impacts and mitigation approaches specific to SR 160 and SR 12. Mitigation measures in Ch. 18 include MM AES-1a: *Install Visual Barriers between Construction Work Areas and Sensitive Receptors*; MM AES-1b: *Apply Aesthetic Design Treatments to Project Structures*; MM AES-1c: *Implement Best Management Practices in Project Landscaping Plan*; MM AES-4a: *Limit Construction Outside of Daylight Hours within 0.25 Mile of Residents at the Intakes*; MM AES-4b: *Minimize Fugitive Light from Portable Sources Used for Construction*; and MM AES-4c: *Install Visual Barriers along Access Routes, Where Necessary, to Prevent Light Spill from Truck Headlights toward Residences* (DCP.D1.1.00156, pp. 18-49–18-99, 18-112–114). In addition, contrary to the allegation that a limited FEIR field reconnaissance was evidence that "minimal data was collected," appellant fails to cite to Sec. 4.12.1, *Relevance*, of G P1 (b)(3) Att. 1 (DCP.AA1.2.00021, p. 4-55), which explains that "the field reconnaissance survey was used to verify locations because, due to the coronavirus disease 2019 (COVID-19) pandemic, recent field and survey work was limited and recreation use patterns had not been typical." The field reconnaissance survey was limited only in as much as it focused on supplementing

earlier field and survey work that was justifiably limited due to COVID-19. Ultimately, the field reconnaissance survey verified and confirmed the "public access routes and locations, as well as physical evidence of recreation use at dispersed recreation sites" (DCP.AA1.2.00021, p. 4-55). See FEIR Att. 16A.2 (DCP.D1.1.00152) for documentation of the field reconnaissance survey. Appellant alleges "data provided in the FEIR and technical appendices fail to provide comparable data on recreation to that collected to support such issues as traffic and transportation." Appellant also alleges "DWR's CEQA impact review approach," produced an "under-documentation of recreational uses and associated impacts" rather than following the Delta Plan's "independent substantive requirements." See Sec. 3.2.4.1, *Documented Use of Best Available Science and Approach to Analysis*, under *DWR's Overall Approach to Using Best Available Science*, for a discussion about commensurate levels of analysis for different resource areas and for a discussion regarding the documentation of DWR's adherence to the Delta Plan in G P1 (b)(3) Att. 1. Consequently, this comment deals with the FEIR and not the Certification. **[A9-6, A9-32, A9-33, A9-34]**

3.2.7.5 Best Available Science Comments with Irrelevant Focus on the FEIR

See the following section for responses to comments in A9 that are similar to those in A1: Sec. 3.2.4.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Best Available Science*. **[A9-32, A9-33]**

3.2.7.6 Consistency with the Six Best Available Science Criteria

Issue. Appellant alleges DWR failed to follow three of six best available science criteria for its recreation analysis: inclusiveness, timeliness, and objectivity. **[A9-6, A9-33]**

Response: DWR's Overall Approach to Consistency with Best Available Science Criteria. See Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*, under *DWR's Overall Approach to Consistency with Best Available Science*, for a discussion of the thorough documentation of the six best available science criteria in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021), which appellant fails to reference. See Sec. 2.2 for a discussion about DSC's role in adjudicating an appeal under the substantial evidence standard, which is limited to determining whether substantial evidence in the record supports DWR's Certification, not to reweighing record or extra-record evidence to decide who has the better argument. Under the substantial evidence standard of review, "what constitutes the best available scientific data or assumptions is itself a scientific determination for which [the certifying agency] is owed deference, provided its conclusions are fairly traceable to the record." (2019 Determination Regarding C20188 (DCP.AA2.1.00098, p. 23, citing *San Luis*, *supra*, 776 F.3d at pp. 995–996.)) Appellant alleges that "DWR's approach fails to follow inclusiveness" because it failed to "gather a full understanding of baseline recreational uses in the Delta." However, appellant does not reference G P1 (b)(3) Att. 1, which is discussed in Sec. 3.2.4.1 under *DWR's Overall Approach to Using Best Available Science,* for its

thorough review of information documenting the recreation analysis. Furthermore, see Sec. 4.12.2, *Inclusiveness*, of G P1 (b)(3) Att. 1 in which DWR demonstrates that its analysis is consistent with the Delta Plan inclusiveness criteria (DCP.AA1.2.00021, pp. 4-55–4-56). As for appellant's contention that DWR failed the timeliness criterion because it "failed to correct data gaps that could have been attributed to difficulties associated with the pandemic, even when the pandemic was over," see Sec. 3.2.4.1 under *DWR's Overall Approach to Using Best Available Science* for a discussion about the field reconnaissance survey supplementing earlier field and survey work that was justifiably limited due to COVID-19. Finally, with regard to appellant's objectivity challenge, stating it was lacking because of a "focus on roads over recreation as needed points of data," see Sec. 3.2.4.1 under *DWR's Overall Approach to Using Best Available Science* regarding the commensurate levels of analysis for different resource areas required for best available science. Furthermore, see Sec. 3.3.5.2 under *Recreation Mitigation* for a list of mitigation measures outlined in G P1 (b)(2) Att. 1 that demonstrate consistency with the Delta Plan's MM 18-1 and MM 18-2 in consideration of design features, ECs, and mitigation measures of the DCP including but not limited to recreation: EC-18: *Minimize Construction-Related Disturbances to Delta Community Events and Festivals*; MM AES-1a; MM AES-1b; and MM NOI-1. **[A9-6, A9-33]**

3.3 G P1 (b)(2) (Mitigation Measures)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with G P1 (b)(2) and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.3.1 A3—County of Sacramento and SCWA (Policy G P1 (b)(2))

3.3.1.1 DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan

Issue. Appellant alleges that the DCP does not include all applicable feasible Delta Plan mitigation measures and that DWR has not provided equally or more effective substitute measures. Specifically, appellant alleges that the DCP does not include Delta Plan MM 4-1(a), MM 4-2(a), MM 4-2(f), MM 4-4(d), MM 7-1(h), or MM 18-1(a) and that DWR has not demonstrated that it provided mitigation measures that are the same as, equal to, or more effective than Delta Plan mitigation measures. **[A3-5, A3-21, A3-22, A3-23, A3-25, AS-WS-7, AS-WS-8, AS-WS-9, AS-WS-10, AS-WS-12, AS-WS-58]**

Response: Mitigation Measures of the DCP Versus the Delta Plan. The Delta Plan and the DCP have very different scopes and levels of effects on the environment that lead to different mitigation needs. G P1 (b)(2) only requires an agency to implement Delta Plan

PEIR mitigation measures, or equivalent measures, where the measures are "applicable" (Cal. Code Regs., tit. 23, § 5002(b)(2)). The programmatic nature of the analysis in the Delta Plan PEIRs, which considered potential types and locations of reasonably foreseeable actions (e.g., covered actions) that may be proposed in the Delta, can be expected to result in the identification of mitigation measures that are not applicable to some covered actions. Not all covered actions required to evaluate consistency with the Delta Plan will include every component considered in the impact analysis in the PEIRs. Furthermore, G P1 (b)(2) only requires an agency to implement the Delta Plan mitigation measures or substitute measures "that the agency that files the certification of consistency finds are equally or more effective," where the measures are feasible. It is up to the proponent of the covered action to determine, based on substantial evidence, whether a measure is equally or more effective (Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Program (July 16, 2021), p. 51). G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) identifies and discusses all Delta Plan mitigation measures, including measures that are wholly or partially not applicable to the DCP, and whether the DCP's measures are equal or more effective. Contrary to appellant's claims, DWR did not fail to include all applicable feasible Delta Plan mitigation measures or provide equally effective substitute measures to mitigate impacts on recreational facilities and opportunities. **[A3-5, A3-25, AS-WS-12]**

Response: Agricultural Resources, Terrestrial Resources, and Recreation Mitigation. The consideration at hand under the DSC's jurisdiction as it pertains to G P1 (b)(2) is whether the mitigation measures identified under the DCP is the same as, equal to, or more effective than the Delta Plan mitigation measures, provided they are applicable and feasible. Although appellant disagrees with specific aspects of the DCP MMRP, they generally fail to identify specific applicable mitigation measures that were not addressed in the Certification. Appellant fails to demonstrate that the DCP is inconsistent with G P1 (b)(2).

In the case of agricultural resources, the objective of Delta Plan MM 7-1 is to avoid impacts associated with the conversion of farmland, land zoned for agriculture, and land subject to Williamson Act contract to nonagricultural uses. As described in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020, pp. 24–26), the DCP includes several ECs (e.g., EC-11: *Fugitive Dust Control* and EC-14: *Construction Best Management Practices for Biological Resources*) and mitigation measures (e.g., MM AG-1: *Preserve Agricultural Land*; MM BIO-14: *Avoid and Minimize Impacts on Vernal Pool Aquatic Invertebrates and Critical Habitat for Vernal Pool Fairy Shrimp*; and MM BIO-18: *Avoid and Minimize Impacts on Valley Elderberry Longhorn Beetle*) to avoid and mitigate impacts on agricultural land that are the same as, equal to, or more effective than Delta Plan MM 7-1. Delta Plan MM 7-1(h) calls for the establishment of non-disturbance buffers during construction between the project and adjacent agricultural lands to protect and maintain land capability and agricultural operation. EC-14 states that "During construction, the non-disturbance buffers described under the special-status species' mitigation measures in Chapter 13, *Terrestrial Biological Resources*,

of the DCP FEIR, will be established and maintained as necessary" (FEIR App. 3B, *Environmental Commitments and Best Management Practices* (DCP.D1.1.00012, p. 3B-26)). Appellant's main concern is about fencing. While 7-1(h) states that "Buffers can function as drainage swales, trails, roads, linear parkways, or other uses compatible with ongoing agricultural operations," it does not limit buffers to only the things listed (i.e., a fence can be a buffer because it creates a barrier between the properties). As Delta Plan MM 7-1(h) states that roads also constitute buffers, appellant's claim that the fact that the project generates construction traffic is proof that buffers are not adequate is inconsistent with Delta Plan MM 7-1(h). In addition, as stated further in this response, other measures have been adopted to mitigate traffic impacts associated with the DCP. FEIR Ch. 15, *Agricultural Resources* (DCP.D1.1.00133, p. 15-37), describes the remnant farmland area analysis developed to identify portions of Important Farmland parcels that will be bisected by the construction footprint. The chapter acknowledges that remnant land may be acquired but lets the existing farm owners participate in the decision of whether to sell the land to DWR or continue operating. If farm operators decide to sell, those remnant parcels would essentially expand the buffer between the project construction and nearest adjacent agricultural use.

Additionally, buffers are not the only way to minimize or mitigate some of the potential impacts that appellant alleges will occur. The DCP includes additional measures to reduce impacts related to traffic, noise, and dust. For example, MM TRANS-1: *Implement Site-Specific Construction Transportation Demand Management Plan and Transportation Management Plan* stipulates that the construction contractor will create site-specific transportation management plans to avoid construction-related effects on agricultural lands and operations. EC-11 stipulates protocols for the control of dust, including wetting construction areas and installing windbreaks. In addition, species-specific mitigation measures and the CMP (App. 3F, *Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources* (DCP.D1.1.00017, p. 3F-13)) include "good neighbor" policies derived from the *Agricultural and Land Stewardship Framework and Strategies* (ALS) (DCP.D3.1.03889, pp. 8, 31–39) that include the creation of buffer zones between habitat preserves and farmland, which will help to reduce or eliminate exposure to pests and disease on neighboring lands, prevent overspray of chemicals onto habitat lands, and assist with a successful transition between different land uses. For example, as described in Att. 3F.1, *Compensatory Mitigation Design Parameters* (DCP.D1.1.00018), under CMP-19b: *Swainson's Hawk Foraging Habitat*, 20- to 30-foot-wide hedgerows will be established along field borders and roadsides at a minimum rate of 400 linear feet per 100 acres of protected cultivated lands. Implementation of the non-disturbance buffers during construction and species-specific buffers during construction and operation—i.e., EC-14 in FEIR App. 3B (DCP.D1.1.00012); the CMP in App. 3F (DCP.D1.1.00017); CMP-19b in Att. 3F.1 (DCP.D1.1.00018); MM BIO-14, MM BIO-18, and MM BIO-21: *Avoid and Minimize Impacts on Crotch Bumble Bee* in Ch. 13, *Terrestrial Biological Resources* (DCP.D1.1.00112); and MM TRANS-1 in Ch. 20, *Transportation* (DCP.D1.1.00168)—will

be the same as, equal to, or more effective than the Delta Plan MM 7-1(h) measure to implement buffers between project facilities and adjacent agricultural land.

See Sec. 3.3.4.2, *Analysis Meets Delta Plan Mitigation Requirements*, under *Agricultural Resources*, for a discussion of the FEIR's conservative impacts analysis for agricultural resources. The DCP project footprint was designed to reduce impacts on agricultural resources and the conversion of agricultural land to nonagricultural use. See FEIR App. 15B, *Agriculture and Land Stewardship Considerations* (DCP.D1.1.00135, pp. 15B-8–15B-15), for more information about how DWR considered the ALS strategies in DCP design and planning.

See Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible,* regarding how the DCP facilities have been sited to reduce conflicts with farmland in consideration of existing land uses. The DCP design balances reduced permanent impacts (conservatively inclusive of "areas with temporary structures, staging areas, and access roads") (DCP.D1.1.00133, p. 15-25) with the need for buffers described in Delta Plan MM 7-1(h). Additional buffers around DCP facilities would result in greater impacts on adjacent agricultural lands. Consistent with Delta Plan MM 7-1(c), DCP impacts will be mitigated at a ratio of 1:1. Furthermore, DWR has also committed to restore land needed only for construction once construction is complete (DCP.D4.3.00001, pp. 12-1–12-2). CER App. I1, *Post-Construction Land Reclamation* (DCP.D4.3.00044), provides details on land reclamation treatments to return temporary construction areas exceeding 5 acres to productive uses. **[A3-5, A3-21, A3-25, AS-WS-7, AS-WS-9, AS-WS-12]**

In the case of terrestrial biological resources and avoidance of effects on sensitive natural communities—including wetlands and riparian habitat (Delta Plan MM 4-1(a)) and special-status species habitat (Delta Plan MM 4-2(a), MM 4-2(f), and MM 4-4(d))—G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) describes ECs, mitigation measures, and CMP measures that avoid, minimize, and reduce effects. The allegations address specific subsections of Delta Plan MM 4-1, MM 4-2, and MM 4-4 in isolation and ignore the full content of these Delta Plan mitigation measures, which include measures that make recommendations for what to do if avoidance through siting is not feasible. For example, Delta Plan MM 4-1(b) describes measures to minimize effects if a covered action cannot avoid them, as do MM 4-2(b)–(d) and MM 4-2(g)–(k). Additionally, Delta Plan MM 4-2(e) and 4-2(l) discuss compensatory mitigation if a covered action cannot avoid and minimize effects. Substantial evidence of DWR's efforts to avoid effects on natural communities and habitats is shown in FEIR Vol. 2, Ch. 3, *Common Responses*, Common Response 3, *Alternatives Development and Description* (DCP.D1.1.00224); CER App. B6*, Intake Site Identification and Evaluation* (DCP.D4.3.00009); and CER App. D1, *Facilities Siting Study* (DCP.D4.3.00024). In cases where sensitive habitat cannot be feasibly avoided, DWR has committed in its enforceable MMRP (DCP.C.1.00002) to minimize disturbance to the greatest degree feasible and to return disturbed areas to preconstruction conditions as near as reasonably and practically

feasible by reestablishing surface conditions through carefully grading and reconstructing features. Implementation of the CMP and its specific measures (DCP.D1.1.00017; DCP.D1.1.00018) and mitigation measures from DWR's MMRP (DCP.C.1.00002)—including MM BIO-2a: *Avoid or Minimize Impacts on Special-Status Natural Communities and Special-Status Plants*; MM BIO-2b: *Avoid and Minimize Impacts on Terrestrial Biological Resources from Maintenance Activities*; MM BIO-2c: *Electrical Power Line Support Placement*; MM BIO-21; MM BIO-33: *Avoid and Minimize Disturbance of Sandhill Cranes*; CMP-18a: *Sandhill Crane Roosting Habitat*; CMP-18b: *Sandhill Crane Foraging Habitat*; and CMP-29: *Crotch Bumble Bee Habitat*—to avoid, minimize, and reduce effects on natural communities and habitats will be the same as, equal to, or more effective than Delta Plan MM 4-1, MM 4-2, and MM 4-4, which set forth a multifaceted approach to avoiding sensitive natural communities and special-status species habitats, including those for sandhill crane and Crotch bumble bee.

Refer also to Sec. 3.1.1.9, *Sensitive Species Habitat*, under *Siting Considerations Included Avoiding or Reducing Conflicts with Special-Status Species Habitat When Feasible,* regarding the restoration and protection of suitable habitat for special-status species and the CMP measures that address Crotch bumble bee, giant garter snake, burrowing owl, greater sandhill crane, least Bell's vireo, tricolored blackbird, Swainson's hawk, valley elderberry longhorn beetle, western yellow-billed cuckoo, winter-run and spring-run Chinook salmon, delta smelt, longfin smelt, and others (DCP.D1.1.00017, pp. 3F-4–3F-5; DCP.D1.1.00018). **[A3-5, A3-22, A3-25, AS-WS-8, AS-WS-12, AS-WS-58]**

In the case of recreational resources and Delta Plan MM 18-1, FEIR Ch. 16, *Recreation* (DCP.D1.1.00149), fully analyzed impacts on recreational resources (REC-1 and REC-2) and concluded the project will result in less-than-significant impacts without mitigation. As explained in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the loss of recreation use (e.g., for angling) near the intakes will be minimal. As described in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) and analyzed in FEIR Ch. 17, *Socioeconomics* (DCP.D1.1.00154), construction will have some effects on recreational activities in the Delta; however, these effects will be minimized with implementation of multiple ECs and mitigation measures. Construction activities will not generally occur on weekends, and because most recreation and tourism activities occur on weekends, effects on recreation and tourism will be minimal. As part of MM AES-4c: *Install Visual Barriers along Access Routes, Where Necessary, to Prevent Light Spill from Truck Headlights Toward Residences*, DWR will install visual barriers along access routes where screening would prevent light spill and will coordinate with interested parties to protect sensitive nighttime recreation resources. Barriers will be a minimum of 5 feet high. Regarding recreation activities near Stone Lakes NWR and Cosumnes River Preserve, MM BIO-33 will minimize impacts on greater and lesser sandhill cranes during their wintering season (Sep. 15–Mar. 15) at the Stone Lakes NWR and Cosumnes River Preserve by limiting construction activities such as pile driving, road construction, helicopter surveys, and geotechnical investigations so that no new sources of

noise or other major disturbance that could affect sandhill cranes will be introduced after the cranes arrive at their wintering grounds. Other protections of this mitigation measure include preconstruction surveys, annual surveys of temporary (cultivated lands) and permanent (managed wetlands) roost sights within 0.75 mile of the construction area boundary, and noise surveys. DWR will also enhance foraging habitat for each acre to be indirectly affected within the 50 dBA L_{eq} (1 hour) construction sound level contour during the wintering season, which will consist of unharvested corn fields to maximize food availability to sandhill cranes. Furthermore, implementation of EC-18: *Minimize Construction-Related Disturbances to Delta Community Events and Festivals*, as described in FEIR App. 3B (DCP.D1.1.00012), will ensure avoidance of community events and festivals; and MM AES-1a: *Install Visual Barriers Between Construction Work Areas and Sensitive Receptors*; MM TRANS-1; and MM NOI-1: *Develop and Implement a Noise Control Plan* will minimize effects on tourism activities when recreationists are in proximity to construction sites. Based on substantial evidence in the record, such as the ECs and mitigation measures discussed, the project has been designed such that recreational facilities and access to recreational opportunities (including bird-watching, hunting, recreational fishing, walking, and on-water recreation [e.g., boating or kayaking]) will be avoided or minimally affected. Implementation of the DCP's ECs and mitigation measures to avoid or minimize effects on recreational resources will be the same as, equal to, or more effective than Delta Plan MM 18-1 related to avoiding or minimally affecting recreational facilities and opportunities. **[A3-5, A3-23, A3-25, AS-WS-10, AS-WS-12]**

3.3.2 A6—Sacramento Area Sewer District (Policy G P1 (b)(2))

3.3.2.1 DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan

See the following section for responses to comments in A6 that are similar to those in A3: Sec. 3.3.1.1, *DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan.* **[A6-5, A6-26, A6-27, A6-28, AS-WS-12]**

3.3.3 A7—City of Stockton (Policy G P1 (b)(2))

3.3.3.1 DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan

Issue. Appellant alleges that the DCP does not include all applicable feasible Delta Plan mitigation measures and that DWR has not provided equal or more effective substitute measures. Specifically, appellant alleges that the DCP does not include Delta Plan MM 20-1 and that DWR has not demonstrated that it provided equal or more effective substitute measures. **[A7-5, A7-23, AS-WS-11, AS-WS-12]**

Response: Solid Waste Mitigation. The consideration at hand under the DSC's jurisdiction as it pertains to G P1 (b)(2) is whether the mitigation measures identified under the DCP are the same as, equal to, or more effective than the Delta Plan mitigation measures, provided they are applicable and feasible. Delta Plan MM 20-1 is not applicable to the DCP because the project does not have a corresponding potentially significant impact on the environment requiring mitigation as identified in FEIR Ch. 21, *Public Services and Utilities* (DCP.D1.1.00172, pp. 21-43–21-46). As described in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), Delta Plan MM 20-1 is not applicable to the DCP because the project will not result in a significant impact related to exceeding the capacity of local landfills or causing conflicts with regulations related to solid waste; therefore, no mitigation measures are required. (Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Program (July 16, 2021), p. 26 ["[W]here an environmental analysis concludes that no potential significant impact would occur, CEQA does not require mitigation measures. Therefore, there is no applicable Delta Plan Mitigation Measure required for this specific impact area."].) Moreover, while not required to demonstrate consistency with G P1 (b)(2), the DCP's design features (i.e., reusing non-hazardous excavated material, spoils, and RTM on-site) and EC-13: *DWR Best Management Practices to Reduce GHG Emissions* (i.e., development of a construction debris recycling and diversion program to manage waste that cannot be reused on-site) are the same as, equal to, or more effective than applicable Delta Plan MM 20-1 elements with regard to reducing the generation of solid waste that could exceed the permitted capacity of local landfills or cause conflicts with federal, state, and local statutes and regulations related to solid waste. The DCP is consistent with G P1 (b)(2) and therefore will not conflict with achievement of the coequal goals as a result of the alleged inconsistency. Furthermore, appellant alleges that DWR made a conclusory statement in saying that all non-hazardous RTM will be stored on-site because, the appellant alleges, it is unclear how much of the project's RTM will be hazardous. However, as discussed in FEIR Ch. 3 (DCP.D1.1.00010, p. 3-32), while additives used to facilitate tunneling will be nontoxic and biodegradable, it is possible that some quantity of RTM will be deemed unsuitable for reuse and will be disposed of at a site approved for disposal of such material. This is expected to apply to approximately 1%–5% of the total volume of excavated material. **[A7-5, A7-23, AS-WS-11, AS-WS-12]**

3.3.4 A1—Delta Protection Commission (Policy G P1 (b)(2))

3.3.4.1 DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan

Issue. Appellant alleges that the DCP recycles agricultural mitigation from California WaterFix. **[A1-8, A1-66]**

Response: Agricultural Resources Mitigation Used for Other Planning Efforts. Just as there are similarities between the DCP MMs and the Delta Plan MMs, there are also similarities between the DCP MMs and WaterFix MMs. In fact, CEQA expressly recommends that agencies consider the content of prior EIRs in preparing future EIRs. (See, e.g., Public Resources Code 21003(d)–(e).) Appellant's statements do not explain why using the similar mitigation as another planning effort or project is inconsistent with any Delta Plan policy. **[A1-8, A1-66]**

Issue. Appellant alleges the DCP is inconsistent with G P1 (b)(2) because the DCP fails to incorporate Delta Plan mitigation measures or to substitute mitigation measures that are the same as, equal to, or more effective for significant and adverse construction impacts on recreation in the Delta. Appellant further alleges that the FEIR inadequately considered recreation in the Delta by failing to base its assessment of recreation impacts on best available science and data and that the FEIR's less-than-significant conclusion for recreation impacts (e.g., potential construction impacts on Turner Cut, Tiki Lagoon Resorts, and Windmill Cover Marina) "does not address the adequacy of mitigation for Delta Plan consistency purposes" and "does nothing to address the damage to or loss of recreation facilities themselves." **[A1-14, A1-27, A1-72, A1-54]**

Response: Recreation Mitigation Consistent with G P1 (b)(2). Regarding the allegation that the DCP fails to incorporate Delta Plan mitigation measures for construction impacts on recreation, see Sec. 3.3.1.1, *DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan*, which explains the mitigation consistency determination conducted between the Delta Plan and the DCP in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020). In summation, DWR's Certification identifies and discusses all Delta Plan mitigation measures, including measures that are wholly or partially not applicable to the DCP in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020). Therefore, DWR did not fail to include all applicable feasible Delta Plan mitigation measures or provide equally effective substitute measures to mitigate all impacts including those for recreational facilities and opportunities. To address the claim that the FEIR inadequately considered recreation in the Delta and failed to base its assessment of impacts on recreation in the Delta on best available science and data, see Sec. 3.2.4.1, *Documented Use of Best Available Science and Approach to Analysis*. This section explains how best available science was used to support the DCP's recreation analysis. Finally, the claim that the FEIR's less-than-significant conclusion for recreation impacts (including potential construction impacts on Turner Cut, Tiki Lagoon Resorts, and Windmill Cover Marina) "does not address the adequacy of mitigation for Delta Plan consistency purposes" and "does nothing to address the damage to or loss of recreation facilities themselves" is also discussed in Sec. 3.2.4.1. Furthermore, this is a comment based on the FEIR rather than information in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) because the Certification itself demonstrates that DWR *did* in fact address the adequacy of mitigation for Delta Plan consistency purposes by providing a detailed analysis of the DCP's consistency with G P1 (b)(2)—including consistency with the Delta Plan's recreation MM 18-1 and MM 18-2.

As concluded in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the design features, ECs, and mitigation measures of the DCP are the same as, equal to, or more effective than applicable Delta Plan mitigation measure elements with regard to preventing impairment or degradation of recreation facilities or activities (Delta Plan MM 18-1) and avoiding increased use resulting in accelerated degradation of recreation facilities or activities (Delta Plan MM 18-2). **[A1-14, A1-27, A1-72, A1-54]**

Issue. Appellant alleges the DCP is inconsistent with G P1 (b)(2) because the DCP fails to clearly comply with the requirement to preserve lands in perpetuity at a minimum 1:1 ratio for permanent conversion of farmland as described in Delta Plan MM 7-1(c). Appellant alleges that the DCP mitigation does not provide enough detail for implementation or certainty that the mitigation measure can be implemented. Furthermore, appellant alleges that the DCP fails to meet the mitigation requirements in Delta Plan MM 6-2 to avoid impacts on environmental resources. Finally, appellant alleges that not all applicable and feasible mitigation measures have been incorporated or adopted as enforceable. **[A1-7, A1-8, A1-9, A1-10, A1-11, A1-65, A1-66, A1-67, A1-69**, **A1-WS-10, A1-WS-11, A1-WS-12, A1-WS-13, A1-WS-14]**

Response: Agricultural Resources Consistent with G P1 (b)(2), Feasible, and Complete. Sec. 3.3.1.1 describes the mitigation consistency determination conducted between the Delta Plan and the DCP in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020). Delta Plan MM 7-1 states that a project that will result in permanent conversion of farmland should preserve lands in perpetuity with a "minimum target ratio of 1:1, depending on the nature of the conversion and the characteristics of the Farmland to be converted." Consistent with this, and as described in G P1 (b)(2) Att. 1, the DCP will implement MM AG-1, which will replace lost agricultural land at a ratio of 1:1. This mitigation ratio will be achieved through a combination of acquisition and dedication of agricultural land, acquisition of development rights or conservation easements to permanently protect agricultural land, or payment of in-lieu fees to fully fund the acquisition and maintenance of such real property interests by a third party. Implementation of MM AG-1 will ensure that other farmland will be preserved for the loss of permanently converted Important Farmland (Ch. 15, Impact AG-1: *Convert a Substantial Amount of Prime Farmland, Unique Farmland, Farmland of Local Importance, or Farmland of Statewide Importance as a Result of Construction of Water Conveyance Facilities* (DCP.D1.1.00133)). In addition to the project design features to minimize loss and fragmentation of agricultural land, MM AG-3: *Replacement or Relocation of Affected Infrastructure Supporting Agricultural Properties* requires project design features be modified to avoid impacts on irrigation or drainage features for agricultural lands beyond the project footprint if feasible, which is consistent with Delta Plan MM 6-2. It should be noted that the FEIR takes a conservative approach to the impact analysis (see Sec. 3.3.4.2, *Analysis Meets Delta Plan Mitigation Requirements*) and includes in the calculation of permanent impacts those temporarily impacted lands anticipated to be reclaimed and returned to agricultural use after construction. Because those impacts are considered to be permanent,

they will be mitigated at a ratio of 1:1. If those lands are returned to agriculture as anticipated, the final mitigation ratio will be higher than the 1:1 ratio. Therefore, the DCP mitigation is consistent with Delta Plan MM 7-1 as well as MM 6-2. In addition, the DCP MMRP (DCP.C.1.00002) specifies the timing and implementation mechanism needed to implement MM AG-1 and MM AG-3. It should be noted that MM AG-3 includes modifying project designs to the extent feasible to avoid conflicts with infrastructure that support agricultural production and operations. MM AG-3 also includes providing new water wells and relocating or replacing other infrastructure to avoid impacts on agricultural lands.

Appellant states that the record includes additional, feasible mitigation that has not been included in the DCP. Appellant fails to cite to what mitigation they are referring to beyond FEIR App. 15B, *Agricultural and Land Stewardship Considerations*, which is addressed in this section under *Mitigation Consistent with Delta Plan MM 6-2*. Also see Sec. 3.1.4.2, *Mitigation Requirements for DP P2 Consistency*, which explains that a certifying agency is not required to adopt additional mitigation measures requested by an appellant to demonstrate consistency with DP P2. Finally, the allegations that DWR's implementation of mitigation is uncertain is meritless. All DCP mitigation measures—including MM AG-1 and MM AG-3—have been adopted and incorporated into the enforceable MMRP (DCP.C.1.00002) for the project (Pub. Resources Code, § 21081.6(a)(1), (b)). Also see Sec. 3.3.1.1 regarding consistency with Delta Plan MM 7-1 and Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*, regarding the substantial evidence standard and appellant's burden and adequacy of the record. **[A1-7, A1-8, A1-9, A1-10, A1-11, A1-65, A1-66, A1-67, A1-69, A1-WS-10, A1-WS-11, A1-WS-12, A1-WS-13, A1-WS-14]**

Issue. Appellant alleges that the mitigation of agricultural land loss is inconsistent with G P1 (b)(2) because the project does not sufficiently avoid agricultural lands (as described in Delta Plan MM 6-2). **[A1-8, A1-66, A1-WS-11, A1-WS-13, A1-WS-14]**

Response: Mitigation Consistent with Delta Plan MM 6-2. The allegation appears to assume that the Delta Plan MM 6-2 refers only to agricultural resources. However, MM 6-2 is applicable broadly to "environmental values," not just agricultural lands.

Regarding consideration of alternatives, FEIR Table 15-7 (DCP.D1.1.00133, p. 15-32) demonstrates that the DCP (Bethany Alternative) has approximately 20%–40% less impact on agricultural lands than the other alternatives considered. FEIR App. 15B (DCP.D1.1.00135) also describes how the DCP has been refined to reduce or avoid permanent impacts on agricultural lands. Delta Plan MM 6-2 does not require that acres avoided be quantified. Furthermore, the DCP is consistent with Delta Plan MM 6-2 because the project was designed to avoid impacts on other environmental values. This is inclusive of DCP MM AG-1, as well as the CMP, and MM BIO-45a: *Compensate for the Loss of Bat Roosting Habitat on Bridges and Overpasses*, as described in G P1 (b)(2) Att. 1

(DCP.AA1.2.00020). Also see Sec. 3.1.1.10, *Evidence of Siting Facilities to Avoid or Reduce Conflicts with Farmland When Feasible*. **[A1-8, A1-66, A1-WS-11, A1-WS-13, A1-WS-14]**

Issue. Appellant alleges that measures described in FEIR App. 15B lack mitigation ratios and are therefore inconsistent with Delta Plan MM 7-1. **[A1-8, A1-66, A1-WS-11]**

Response: ALS Strategies Are in Addition to DCP Mitigation Measures, Which Are Equivalent to Delta Plan Mitigation Measures. The purpose of FEIR App. 15B (DCP.D1.1.00135) is to describe additional details related to strategies and planned actions that DWR uses related to agricultural and land stewardship (ALS) strategies considered to minimize agricultural effects of the DCP. The ALS strategies are outlined in *Agriculture and Land Stewardship Framework and Strategies* (DCP.D3.1.03889), which presents a voluntary, collaborative process using a selection of strategies for agriculture and land stewardship in the Delta. FEIR App. 15B describes the ALS strategies implemented during early project planning to minimize the extent of farmland that project buildout would convert and identifies ALS strategies that could be considered for future implementation. FEIR App. 15B does not need to include specific mitigation ratios because DCP MM AG-1 includes the mitigation ratio of 1:1 and is consistent with Delta Plan MM 7-1. See Sec. 3.3.1.1 regarding consistency with Delta Plan MM 7-1. See Sec. 3.1.1.10 regarding evidence of siting facilities to avoid or reduce conflicts with agricultural lands. **[A1-8, A1-66, A1-WS-11]**

3.3.4.2 Analysis Meets Delta Plan Mitigation Requirements

Issue. Appellant alleges that there is no analysis of temporary and permanent impacts on recreational uses in the project area because there is "virtually no relevant data on both formal and informal recreational uses in the project area" and that DWR has not demonstrated that the DCP meets the standard set forth in Delta Plan MM 18-2(a). Appellant further alleges that DWR's Certification fails to establish that the DCP is consistent with G P1 (b)(2) for recreation. **[A1-15, A1-17, A1-73, A1-75]**

Response: Recreation Analysis. FEIR Ch. 16 (DCP.D1.1.00149) analyzed temporary (i.e., during the construction period and peak increase in construction workers) and permanent recreational impacts by examining the areas where formal and informal recreation impacts will occur, which coincide with the temporary and permanent footprints of disturbance associated with construction of all the DCP's features and related facilities (see Sec. 3.2.4.1). Therefore, appellant's claim that there is no analysis of temporary and permanent impacts on recreational uses in the project area is incorrect. Regarding appellant's claims related to Delta Plan MM 18-2 and consistency with G P1 (b)(2) for recreation, G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) provides a consistency analysis between the DCP's design features, ECs, and mitigation measures that maintain recreational impacts at less-than-significant levels to the measures under Delta Plan MM 18-2 and concludes that the features, commitments, and measures of the DCP are the same as, equal to, or more effective than applicable Delta Plan MM 18-2 elements. Appellant fails to meet their burden of proof to

demonstrate that the DCP's mitigation is not the same as, equal to, or better than the Delta Plan mitigation measures. **[A1-15, A1-17, A1-73, A1-75]**

Issue. Appellant alleges that DWR's analyses of permanent impacts on agricultural resources in the project area are underestimated and that there are unaccounted-for impacts related to fragmented lands. **[A1-7, A1-8, A1-10, A1-65, A1-66, A1-68, A1-WS-10, A1-WS-12, A1-WS-13, A1-WS-14]**

Response: Agricultural Resources. FEIR Ch. 15 (DCP.D1.1.00133) adequately analyzed permanent impacts on agricultural lands. As described in Sec. 15.3.1.1, *Process and Methods of Review of Agricultural Resources*, of Ch. 15, permanent impacts include those resulting from the physical footprint of project facilities—land that cannot be returned to farmland because it now contains, for example, a pump station, intake, forebay, sedimentation basin, or farmland permanently modified in a manner that makes it unsuitable for growing crops (e.g., topsoil was entirely removed). In addition, some traditionally "temporary" impacts are designated as permanent agricultural impacts where there is uncertainty whether the farmland will be returned to productive farmland following completion of construction activities (e.g., because it is subject to an amount of soil compaction that may hinder its crop productivity or the area is potentially too small to be farmed economically). These include areas in the construction footprint where no permanent physical structures are planned (e.g., areas with temporary structures, staging areas, and access roads). Table 15-8 lists the potential remnant farmland area impacted by the DCP (Alternative 5) (DCP.D1.1.00133, p. 15-38). Furthermore, temporary impacts are those where land could be returned to a condition suitable for agricultural production and where the duration of impact is expected to be short (generally not extending beyond 2 years at a given location). Lands expected to be impacted for a longer duration are considered permanently impacted for the purposes of the analysis. Appellant's claim that the DCP does not include restoration standards, soil replacement criteria, or monitoring to verify the ongoing viability of agriculture on temporarily impacted lands postconstruction is meritless. Soil testing is described for multiple facility sites where temporary impacts are expected in FEIR Ch. 15 under *Project Construction—Permanent Impacts* (DCP.D1.1.00133, pp. 15-30–15-37). In short, agronomic testing will be done as part of the project to determine viability of remediation and restoration of soils. As stated in the FEIR, since feasibility of agricultural land reclamation is uncertain, those impacts are considered permanent and will be mitigated at a 1:1 ratio per MM AG-1.

The FEIR employed an analytical approach to adequately quantify potentially impacted permanent acres by using a broad definition of "permanent" impacts and a narrow definition of "temporary" impacts and by including remnant farmland areas impacted in the analysis. Therefore, the FEIR adequately analyzed potential permanent impacts. **[A1-7, A1-8, A1-10, A1-65, A1-66, A1-68, A1-WS-10, A1-WS-12, A1-WS-13, A1-WS-14]**

Issue. Appellant alleges the DCP is inconsistent with G P1 (b)(2) because the DCP fails to incorporate Delta Plan mitigation measures or to substitute mitigation measures that are the

same as, equal to, or more effective than Delta Plan measures for significant and adverse impacts on cultural resources in the Delta, particularly cultural landscapes. Appellant further alleges that the FEIR inadequately considered cultural resources and legacy communities and should take a cultural landscape contextual approach. In addition, appellant alleges that the DCP mitigation fails to identify funding sources for managing impacts on cultural resources. **[A1-4, A1-5, A1-6, A1-62, A1-63, A1-64, A1-WS-15]**

Response: Cultural Resources Mitigation—Cultural Landscape Investigation, Avoidance, and Protection. Appellant fails to confront the substantial evidence in the record that DWR evaluated cultural resources using a robust historic context and a landscape approach. Furthermore, although appellant argues that the mitigation for cultural resources is not adequate, appellant fails to meet their burden of proof to demonstrate that the DCP's mitigation is not the same as, equal to, or better than Delta Plan mitigation measures. FEIR Ch. 19, *Cultural Resources* (DCP.D1.1.00162), acknowledges that the *Delta Conveyance Project Historical Resources Survey and Evaluation Report* (HRSER)—which is included in the FEIR as App. 19A, *Historical Resources Survey and Evaluation Report* (DCP.D1.1.00164)—does not include an inventory for the entire study area because DWR does not have legal access to the entire study area. Contrary to the allegation that DWR did not take a landscape approach, among the resources addressed in the HRSER are the Bouldin Island Rural Historic Landscape, Bacon Island Rural Historic District, Staten Island Rural Historic Landscape, and several other multi-county districts and resources, some of which were determined to be eligible resources and then assessed in FEIR Ch. 19 (DCP.D1.1.00162). App. 19A describes the scope requirements for islands evaluated in the FEIR as "the whole of each island was included in the AI-BE [Area of Impact for Built-Environment Resources], fieldwork demonstrates existing landscape features for evaluation, and access to each island [Staten Island and Bouldin Island] was readily available" (DCP.D1.1.00164, p. 15). As described in Impact CUL-2: *Impacts on Unidentified and Unevaluated Built-Environment Historical Resources Resulting from Construction and Operation of the Project*, additional Delta islands remain to be assessed when access is available to determine whether they demonstrate existing landscape features for CRHR/NRHR evaluation (DCP.D1.1.00162, p. 19-49–19-50). Regarding these areas and assessments, MM CUL-2: *Conduct a Survey of Inaccessible Properties to Assess Eligibility and Determine Whether These Properties Will Be Adversely Affected by the Project* states, "Before construction, DWR will have access to all property needed to finalize the inventory and evaluation, and DWR will ensure that all areas of impacts will be surveyed" (DCP.D1.1.00162, p. 19-51). All surveys must be led or supervised by architectural historians that meet the Secretary of the Department of the Interior's professional qualification standards. Newly identified resources must be mapped and described on DPR 523-series forms and evaluated for CRHR- and NRHP eligibility. The resource evaluations will be summarized in an inventory report and, if applicable, a Landscape Treatment Plan will be prepared (DCP.D1.1.00162, p. 19-51); these measures are commensurate with Delta

Plan MM 10-3. The documentation of the Sacramento–San Joaquin Delta NHA was also reviewed. "While the Delta NHA does not impose a regulatory requirement on the project, the themes, boundaries, and significant resources were considered as part of the project's approach to identification and evaluation of potential historical resources. The NHA designation demonstrates the significance of the Delta within the context of the nation. The NHA designation does not connote NRHP eligibility" (App. 19A (DCP.D1.1.00164, p. 15)). The NHA historical themes, as defined by the DPC, were considered in the HRSER landscape evaluations (DCP.D1.1.00164, p. 18; DCP.D3.1.04085).

Appellant argues that the historical context for the Delta's agricultural traditions is insufficient, but they ignore Ch. 19 and App. 19A references to DWR's Delta Research Design and Context Statement (RD&CS) (DCP.D3.1.04058). The FEIR clearly cites the RD&CS for historic contexts was developed for DWR's cultural resources evaluations; and the RD&CS specifically addresses the Delta's historical agriculture that is not limited to industrial agriculture (DCP.D3.1.04058, pp. 3-25–3-29). Additional historic context not contained in the cited RD&CS was drafted to supplement the RD&CS, such as the industrial agriculture context described by appellant (DCP.D1.1.00162, pp. 19-16–19-28; DCP.D1.1.00164, pp. 22–23). Other comments by appellant regarding insufficient historical context also ignore DWR's RD&CS.

FEIR Ch. 19 examined the effects on 31 eligible built-environment resources and 34 archaeological resources. The FEIR concluded that impacts of the DCP on six resources will be significant and unavoidable, even with application of mitigation measures. As discussed in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the DCP's mitigation measures related to cultural resources are meant to avoid, minimize, or mitigate the disturbance or loss of historical and archaeological resources. These measures are supported by other mitigation to avoid, minimize, or mitigate impacts on Tribal cultural resources that are archaeological in nature, as analyzed in FEIR Ch. 32, *Tribal Cultural Resources* (DCP.D1.1.00205).

Regarding the adequacy DCP's mitigation measures, pursuant to MM CUL-2, additional areas will be surveyed once DWR gains access to all property. All surveys must be led or supervised by architectural historians that meet the Secretary of the Department of the Interior's professional qualification standards. MM CUL-1a: *Avoid Impacts on Built-Environment Historical Resources through Project Design* includes redesign or modification of relevant facilities or construction activities to avoid or minimize impacts on historical resources, to the extent feasible. MM CUL-1b: *Prepare and Implement a Built-Environment Treatment Plan in Consultation with Interested Parties* requires preparation of a Built-Environment Treatment Plan for each historical resource affected by the project and additional studies conducted pursuant to MM CUL-2. MM CUL-1b requires that documentation and recordation be prepared for historic resources that will be directly and adversely affected by project construction. Specifically, Historic American Building Survey documentation will be prepared for CRHR- and NRHP-eligible buildings and structures that

will be demolished or altered. Such documentation will be led or supervised by architectural historians that meet the Secretary of the Interior's Professional Qualification Standards. Historic American Landscape Survey (HALS) records and Historic American Engineering Record documents will also be prepared for affected historic landscapes or water infrastructure resources. Finally, as applicable for cultural landscapes and historic districts, MM CUL-1b requires preparation of a Landscape Treatment Plan to document the history and significance of the NRHP-eligible landscape identified in the HRSER and provide treatment recommendations. The Historic American Building Survey documents, HALS, and Landscape Treatment Plan are the same as, equal to, or more effective than the Delta Plan MM 10-3 recommendation to provide photographic and written documentation where avoidance of significant historic resources is not possible. These enforceable measures are the same as, equal to, or more effective than the applicable Delta Plan MM 10-1 and MM 10-3 measures.

Furthermore, DWR's MM TCR-1b: *Plans for the Management of Tribal Cultural Resources* and MM TCR-1d: *Incorporate Tribal Knowledge into Compensatory Mitigation Planning (Restoration)*, described in FEIR Ch. 32 (DCP.D1.1.00205) and the enforceable MMRP (DCP.C.1.00002), incorporate Indigenous knowledge. As described in the Certification, to incorporate Indigenous knowledge in DCP planning, "DWR will identify opportunities for Tribes' reviews, comments, and other participation in specific covered action activities, and seek Tribes' input and collaboration. This will be conducted per the procedures outlined in the DWR's Heritage Resources Management Plan, which are consistent with the FEIR Mitigation Measures TCR-1b and TCR-1d" (DCP.AA1.2.00001, p. 180).

Regarding the allegation that DWR's cultural resources mitigation fails to identify "defined funding sources for mitigating direct or indirect impacts," as described in the Certification Sec. 3.3, *Adopted and Enforceable Mitigation Measures and Environmental Commitments*, "All mitigation measures and environmental commitments referenced in this Certification and its attachments are part of DWR's adopted and enforceable MMRP for the covered action" (DCP.AA1.2.00001, p. 7), and the MMRP is an enforceable condition of project approval (DCP.B.1.00001, p. 2; DCP.C.1.00002, pp. 1–2). (See also Pub. Resources Code, § 21081.6(b) [directing public agencies to make an MMRP "fully enforceable through permit conditions…"].)

See Sec. 3.1.7.5, *Tribal Cultural Resources*, under *Consideration and Avoidance of Tribal Cultural Resources and the Delta Tribal Cultural Landscape*, regarding DWR's consideration of information provided by Tribes and the extensive and continuing engagement with interested Tribes for the life of the project (FEIR App. 32A, *Tribal Consultation and Engagement Log* (DCP.D1.1.00206)). Efforts have been made during planning to assess locations where construction activities have the potential to damage known Tribal cultural resources—including the Delta Tribal Cultural Landscape elements that are ethnohistorical or archaeological locations—and to avoid physical disturbance of a

known ethnohistorical or archaeological locations, in accordance with DCP mitigation measures (TCR-1a, TCR-1b, TCR-1c, and TCR-1d) described in FEIR Ch. 32 (DCP.D1.1.00205) and the enforceable MMRP (DCP.B.1.00001, p. 2; DCP.C.1.00002, pp. 1–2), which are the same as, equal to, or more effective than Delta Plan MM 10-1.

As concluded in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the DCP's mitigation measures described above are the same as, equal to, or more effective than applicable Delta Plan MM 10-1 and Delta Plan MM 10-3 elements with regard to impacts on cultural resources including built-environment, archaeological, Tribal cultural, and cultural landscape resources.

See Sec. 3.3.4.4, *Mitigation and the Coequal Goals*, under *Cultural Resources Mitigation*, for a discussion of cultural resources mitigation in relation to coequal goals. **[A1-4, A1-5, A1-6, A1-62, A1-63, A1-64, A1-WS-15]**

Issue. Appellant alleges that DWR's GIS analysis for agricultural land impacts is insufficient. **[A1-10]**

Response: Commission's Mapping Does Not Support an Alleged Mitigation Measure Inconsistency. Appellant's arguments present mapping that was not before DWR or included in the Certification record (see Table 5-1 in Sec. 5, *Objections*). Appellant fails to explain how the appellant's re-mapping of DWR's FEIR GIS Data (which is in the Certification Record) supports the argument that the evidence presented by DWR does not meet the substantial evidence standard. In certifying the DCP FEIR, DWR adopted an enforceable MMRP (DCP.C.1.00002) and determined that the DCP's agricultural impacts were reduced to the extent feasible through implementation of the mitigation measures required therein. G P1 (b)(1) requires that covered actions be consistent with implicated Delta Plan regulatory policies, which for DCP includes DP P2. Note that DP P2 requires facilities be sited to avoid or reduce conflicts when feasible, not to the extent feasible. As demonstrated in the DCP FEIR and depicted in appellant's mapping, impacts on agricultural uses remain even after mitigation. This fact, however, does not demonstrate that the DCP mitigation measures are not the same as, equal to, or more effective than Delta Plan MM 7-1. Therefore, appellant has not raised an appealable issue with respect to consistency with G P1 (b)(2). Refer also to Sec. 2.2 under *Limited Nature of Review Under Substantial Evidence Standard*, for a discussion about DSC's role in adjudicating an appeal under the substantial evidence standard, which is limited to determining whether substantial evidence in the record supports DWR's Certification, not to reweighing record or extra-record evidence to decide who has the better argument. Also see Sec. 3.3.4.2 regarding the adequacy of DWR's analysis pertaining to impacts on agricultural lands. **[A1-10]**

3.3.4.3 Consistency with Delta Plan Mitigation Requirements

Issue. Appellant alleges that mitigation for impacts on recreational activities that rely on roads, highways, and waterways for part of the experience are not addressed and that, therefore, the DCP is inconsistent with Delta Plan mitigation requirements. **[A1-16, A1-74]**

Response: Recreation Mitigation. The DCP is consistent with Delta Plan mitigation requirements. FEIR Ch. 16 (DCP.D1.1.00149) includes boating and sightseeing from roads and scenic highways as types of recreational uses in its impact analysis. As discussed in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), it is likely that recreationists in some areas (e.g., specific portions of waterways or on shorelines or stretches of roads) will be able to have near and/or middle ground views of new project structures and associated facilities (Ch. 18, *Aesthetics and Visual Resources* (DCP.D1.1.00156)). These intrusions on the landscape will diminish the quality of the rural setting and attractiveness of the area for recreation; therefore, DWR will implement MM AES-1b: *Apply Aesthetic Design Treatments to Project Structures*, which requires use of aesthetic design treatments to minimize the effect on existing visual quality and character in communities within the statutory Delta to the extent feasible. As concluded in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020), the DCP mitigation measures described here are the same as, equal to, or more effective than the applicable Delta Plan MM 18-1 elements with regard to impairment or degradation of recreation facilities or activities. Additionally, appellant implies that there is a definition that temporary impacts are no longer than 2 years; however, FEIR Ch. 16 (DCP.D1.1.00149) does not include this definition. **[A1-16, A1-74]**

3.3.4.4 Mitigation and the Coequal Goals

Issue. Appellant alleges that evidence in the Certification documents does not support the conclusion that project mitigation measures are sufficient to achieve the coequal goals in the manner described in Water Code section 85054 because while mitigation related to water supply impacts is specific and standardized, mitigation related to impacts on agricultural resources is vague and nonbinding. Appellant also alleges that the project is inconsistent with G P1 (b)(2) for agricultural lands and thus its mitigation measures will have significant adverse effects on the coequal goals and undermine the Delta Plan. **[A1-7, A1-9, A1-12, A1-13, A1-16, A1-65, A1-67, A1-70, A1-71, A1-74, A1-WS-7]**

Response: Agricultural Resources Mitigation. As described in Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *G P1 (b)(2)* (DCP.AA1.2.00001), a covered action, by itself, does not need to further both of the coequal goals to be consistent with the coequal goals, but it should avoid conflicting with either goal. None of the various strategies identified in the DSC's definition of the Delta as an evolving place (Cal. Code Regs., tit. 23, § 5001(l)(3)) (DCP.AA2.1.00015, pp. 164, 192) are directly assigned to DWR or the DCP; however, the DCP does not conflict with the achievement of the strategies in that definition. DWR has determined, based on substantial evidence in the

record, that the DCP is consistent with G P1 (b)(2) because, collectively, the project's design features (as discussed in the environmental impact analysis), ECs, and mitigation measures are the same as, equal to, or more effective than mitigation measures described in Delta Plan App. O, *Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program* (DCP.AA2.1.00097), at reducing impacts on the environment from the construction and operation of the project. Appellant has not shown that the evidence supporting this determination of consistency with G P1 (b)(2) is not substantial.

Despite appellant's claim regarding "non-binding stewardship concepts," all mitigation measures—including the CMP and the ECs in the FEIR—have been adopted and incorporated into the DCP's enforceable MMRP (DCP.C.1.00002) (Pub. Resources Code, § 21081.6(a)(1), (b)).

Despite appellant's claim regarding "generalized descriptions, unquantified easements, [and] deferred planning," the Certification mitigation crosswalk table (G P1 (b)(2) Att. 1 (DCP.AA1.2.00020)) details how MM AG-1 and MM AG-3 meet or exceed the requirements of Delta Plan MM 6-2 and MM 7-1(a)–(h). The project design, mitigation measures, ECs, and CMP protect Delta agricultural landscapes—and thus uphold the coequal goals—in an appropriate, timely, and binding fashion. Project mitigation related to agricultural resources also match the level of detail and commitment required by the Delta Plan mitigation measures. As detailed under Delta Plan MM 7-1 in the mitigation crosswalk table, the DCP's design features, ECs, and mitigation measures related to mitigating the loss of existing agricultural land, siting the project to avoid agricultural land to the extent possible, and use of buffers and weed management to reduce the impact on existing agricultural operation are meant to reduce, minimize, or avoid effects on agricultural land, as analyzed in FEIR Ch. 15 (DCP.D1.1.00133). (See also the discussion of whether DCP mitigation measures are equal to or better than those of the Delta Plan in Sec. 3.3.4.1, *DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan*.) **[A1-7, A1-9, A1-12, A1-13, A1-16, A1-65, A1-67, A1-70, A1-71, A1-74, A1-WS-7]**

Issue. Appellant alleges that the DCP's cultural resources mitigation will have a significant adverse effect on the coequal goals and undermine the Delta Plan. **[A1-6, A1-64]**

Response: Cultural Resources Mitigation. Although appellant argues that the mitigation described in the FEIR is not adequate, appellant fails to meet their burden of proof to demonstrate that the DCP's mitigation is not the same as, equal to, or better than the Delta Plan mitigation measures. See Sec. 3.3.4.4 under *Agricultural Resources Mitigation*, for information on why a covered action, by itself, does not need to further both of the coequal goals to be consistent with the coequal goals. DWR has determined, based on substantial evidence in the record (DCP.AA1.2.00020), that the DCP is consistent with G P1 (b)(2) because, collectively, the project's design features (as discussed in the environmental impact analysis), ECs, and mitigation measures are the same as, equal to, or more effective than the

mitigation measures described in App. O of the Delta Plan (DCP.AA2.1.00097) at reducing impacts on the environment from the construction and operation of the project.

See Sec. 3.3.4.2 under *Cultural Resources Mitigation*, for a discussion of the adequacy of cultural resources mitigation. Appellant fails to demonstrate that the evidence supporting DWR's determination of consistency with G P1 (b)(2) is not substantial. **[A1-6, A1-64]**

3.3.4.5 Mitigation Measure Comments with Irrelevant Focus on the FEIR

Issue. Appellant alleges that DWR did not adopt mitigation measures that would meaningfully support the economic health and well-being of Delta communities and stated DWR could do more to minimize the DCP's impacts on the economic drivers (agriculture, recreation, and emerging tourism) of Hood. Furthermore, appellant disagrees with the level of impacts disclosed in the FEIR on land use (involving conflicts with housing and the proposed groundwater mitigation) and community character (involving construction impacts) and with the criterion used to evaluate recreation impacts. **[A1-27, A1-39, A1-51, A1-54, A1-WS-10]**

Response: Certification Documents the Use of Mitigation Measures. G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) clearly demonstrates that DWR *did* in fact address the adequacy of mitigation by performing a consistency evaluation in the attachment that shows how the FEIR's mitigation measures are consistent with G P1 (b)(2) because they are the same as, equal to, or more effective than the corresponding Delta Plan mitigation measures. Furthermore, appellant raises concerns with the findings in the FEIR rather than information presented in the Certification and fails to cite information in G P1 (b)(2) Att. 1. The FEIR was approved and certified and is not the subject of an appeal on the Certification; an appellant's burden is to demonstrate that no substantial evidence supports DWR's Delta Plan policy consistency findings. See Sec. 2.2 under *Limited Nature of Review Under Substantial Evidence Standard* for a discussion about DSC's role in adjudicating an appeal under the substantial evidence standard, which is limited to determining whether substantial evidence in the record supports DWR's Certification, not to reweighing record or extra-record evidence to decide who has the better argument. **[A1-27, A1-39, A1-51, A1-54, A1-WS-10]**

3.3.5 A9—San Joaquin County et al. (Policy G P1 (b)(2))

3.3.5.1 Mitigation Measure Comments with Irrelevant Focus on the FEIR

Issue. Appellant broadly alleges that mitigation measures do nothing to address the "damage to or loss of recreation facilities themselves, or their reduction in desirability as a result of the project." **[A9-33, A9-5]**

Response: Certification Documents the Use of Mitigation Measures. The Certification clearly demonstrates that DWR *did* in fact address the adequacy of mitigation for Delta Plan consistency purposes. For example, G P1 (b)(2) Att. 1 (DCP.AA1.2.00020, p. 60) states that although "construction would have some effects on recreational activities in the Delta[,] . . . these would be minimized with implementation of multiple ECs and mitigation measures." Furthermore, after describing that construction-related activities will generally not occur on weekends, which will ensure effects on recreation are reduced, G P1 (b)(2) Att. 1 describes that one such EC, EC-18, will ensure construction-related disturbances avoid community events and festivals. The DCP's ECs and mitigation measures described in G P1 (b)(2) Att. 1 are the same as, equal to, or more effective than applicable Delta Plan MM 18-1 elements with regard to impairment or degradation of recreation facilities or activities. **[A9-33, A9-5]**

3.3.5.2 DCP Mitigation Measures Are Equal to or Better Than Those of the Delta Plan

Issue. Appellant alleges the only mitigation included for recreation was the creation of "site-specific construction traffic management plans." Appellant further alleges that such mitigation measures "do nothing to address the damage to or loss of recreation facilities themselves, or their reduction in desirability as a result of the project." **[A9-5, A9-33]**

Response: Recreation Mitigation. Pursuant to California Code of Regulations, title 23, section 5002(b)(2), the only reviewable issue in the Certification under G P1 (b)(2) is whether the mitigation identified under the DCP is the same as, equal to, or more effective than the Delta Plan mitigation measures. Although appellant's contention is that the mitigation measures for recreation do not go far enough, they cite to the FEIR and not the Certification and fail to refute the substantial evidence demonstrating that the mitigation adopted by DWR is as effective as the Delta Plan mitigation measures. Appellant's claim that mitigation measures "do nothing to address the damage to or loss of recreation facilities themselves, or their reduction in desirability as a result of the project" is not only incorrect, but it also fails as a matter of law because appellant did not confront all the mitigation that DWR relied on to support its findings relating to Delta Plan MM 18-1 and MM 18-2. In addition to the mitigation measure appellant references (MM TRANS-1), the following mitigation measures were identified in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) to support DWR's findings relating to Delta Plan MM 18-1 and MM 18-2: EC-18, MM AES-1a, MM AES-1b, and MM NOI-1. Appellant's allegation is a comment based on select mitigation measures from the FEIR rather than information in G P1 (b)(2) Att. 1 (DCP.AA1.2.00020). The Certification itself demonstrates that DWR *did* in fact address the adequacy of mitigation for Delta Plan consistency purposes by providing a detailed analysis of the DCP's consistency with G P1 (b)(2), including consistency with the Delta Plan MM 18-1 and MM 18-2. As concluded in G P1 (b)(2) Att. 1, the design features, ECs, and mitigation measures of the DCP are the same as, equal to, or more effective than applicable Delta Plan mitigation measure elements with regard to impairment or degradation of recreation facilities or

activities (Delta Plan MM 18-1) and to increased use resulting in accelerated degradation of recreation facilities or activities (Delta Plan MM 18-2). For comments based on the FEIR rather than on the information in G P1 (b)(2) Att. 1, see Sec. 3.3.5.1, *Mitigation Measure Comments with Irrelevant Focus on the FEIR*, under *Certification Documents the Use of Mitigation Measures* for a discussion of why such comments do not comply with DSC's appeal procedures. **[A9-5, A9-33]**

Issue. Appellant alleges DWR failed to include or require any mitigation measures to address golden mussel proliferation as a result of the construction and operation of the DCP tunnel, consistent with Delta Plan MM 4-1(e). Appellant further alleges that the tunnel inspection schedule described in FEIR Ch. 3, *Description of the Proposed Project and Alternatives*, is inadequate protection against golden mussel. **[A9-5, A9-WS-2, A9-WS-3, A9-WS-4]**

Response: Mitigation to Address Invasive Species, Particularly Golden Mussel. Contrary to appellant's allegation, the tunnel maintenance described in FEIR Ch. 3 (DCP.D1.1.00010, p. 3-27) is not intended to address invasive species, particularly golden mussel. Rather, G P1 (b)(2) Att. 1 (DCP.AA1.2.00020) describes the DCP's mitigation measures, project design features, and ECs that are equal to or better than the Delta Plan's mitigation measures, including Delta Plan MM 4-1 (strategies associated with invasive species management including 4-1(e)). The DCP's EC-4a: *Develop and Implement Erosion and Sediment Control Plans*; EC-11; and EC-14 require preparing an invasive plant species management and control plan prior to construction for each construction site to ensure invasive plant species and populations are kept below preconstruction abundance, reducing the potential for the introduction and spread of invasive plants by restoring temporarily disturbed areas and reseeding of areas with noninvasive (e.g., native or non-self-propagating) species, and ensuring equipment is cleaned and inspected before entering new areas (FEIR App. 3B (DCP.D1.1.00012)). MM AQUA-1b: *Develop and Implement a Barge Operations Plan* requires development and implementation of a barge operations plan, which stipulates that construction contractors are responsible for observation of state laws regarding monitoring and control of invasive species when introducing new watercraft to the Delta, thereby reducing the potential for introduction and spread of invasive species (G P1 (b)(2) Att. 1 (DCP.AA1.2.00020, p. 7)).

See the discussion in Sec. 3.2.7.3, *Use of Best Available Science to Address the Golden Mussel* (Limnoperna fortunei), for information explaining how DWR uses best available science to address nonnative species. See also Sec. 3.6.1.1, *Consideration of Golden Mussel (*Limnoperna fortunei*)*, under *Nonnative Invasive Species, Including Golden Mussel, Fully Considered*, and Sec. 3.6.2.1, *Golden Mussel (*Limnoperna fortunei*) Management at Project Facilities Through State- and Department-Wide Invasive Species Programs*, under *DWR Committed to Managing Invasive Aquatic Species*, which explain that DWR has fully considered invasive species and the golden mussel in particular. As described in the Certification, DWR actively participates in various multiagency and statewide efforts with

the goals of managing treatment of invasive species as threats develop, like the Golden Mussel Task Force (DCP.AA1.2.00001, pp. 159–160). The DCP, once it is constructed, will be part of the SWP; therefore, in implementing the DCP, DWR must comply with all applicable SWP programs, plans, and other commitments related to managing the potential for new introductions of or improved habitat conditions for nonnative invasive species (DCP.AA1.2.00001, pp. 159–163). **[A9-5, A9-WS-2, A9-WS-3, A9-WS-4]**

3.3.5.3 Analysis Meets Delta Plan Mitigation Requirements

Allegations that there is no analysis of temporary and permanent impacts on recreational uses in the project area and that DWR has not demonstrated that the DCP meets the standard set forth in Delta Plan MM 18-2(a) are similar to those in A1. See Sec. 3.3.4.2, *Analysis Meets Delta Plan Mitigation Requirements*, under *Recreation Analysis*, for a discussion of the FEIR's recreation analysis and the consistency analysis between the DCP's design features, ECs, and mitigation measures and the measures under Delta Plan MM 18-2, which concludes that the features, commitments, and measures of the DCP are the same as, equal to, or more effective than applicable Delta Plan MM 18-2 elements with regard to increased use resulting in accelerated degradation of recreation facilities or activities. See also Sec. 3.2.7.4, *Use of Best Available Science in the Recreation Analysis*. **[A9-5, A9-WS-5]**

3.4 ER P1 (Delta Flow Objectives)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with ER P1 and therefore does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.4.1 A3—County of Sacramento and SCWA (Policy ER P1)

3.4.1.1 Modeling Provides Substantial Evidence of Consistency

Issue. Appellant alleges that modeling for the project is insufficient because it does not model the operations and impacts of the DCP based on the conditions that are projected to exist when the DCP would be operational (i.e., after 2040) and that modeling conducted under 2070 future climate conditions demonstrates noncompliance. Additionally, appellant alleges that the Certification incorrectly asserts that issuance of a TUCO is not proof of inconsistency with D-1641. **[A3-8, A3-49, AS-WS-38]**

Response: Modeling Approach Supported by Best Available Science. As described in the Certification (DCP.AA1.2.00001, pp. 96–120), the DCP is consistent with ER P1. See also Sec. 3.2.1.4, *Use of CalSim in Assessing Impacts on Aquatic Species,* regarding DWR's modeling approach being supported by best available science. The modeling approach for ER P1 is specifically discussed in the Certification (DCP.AA1.2.00001, pp. 101–102), and

additional substantial evidence in support of the modeling approach is discussed in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). As discussed in (DCP.AA1.2.00001, pp. 101–102) in Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *ER P1*, the CalSim 3 models are run over an extended period of record (water years 1922–2022 in the updated modeling) to capture changes in operations over a range of hydrologic conditions and did not include modeling under the 2070 future conditions scenario (DCP.AA1.2.00001, pp. 101–102). Nothing in ER P1 requires modeling at future climate conditions, and therefore the allegations related to 2070 are not an appealable issue or relevant to the substantial evidence that DWR relied on in the ER P1 analysis. Defining water supply and water management conditions approximately 50 years in the future is highly speculative. While not relevant to DWR's ER P1 analysis, DWR conducted modeling under the 2070 future conditions scenario in FEIR App. 4A, *Consideration of 2070 Conditions* (DCP.D1.1.00029). The 2070 scenario is not predictive and should not be construed as such (DCP.D1.1.00029, p. 4A-1).

FEIR App. 5A, Sec. A, *Modeling Technical Appendix—Modeling Overview* (DCP.D1.1.00034, p. A-8), also provides a detailed discussion of model limitations and acknowledges how these limitations influence the use of the modeling tools. CalSim 3 is partly a physically based model and partly a management model, so the model cannot be fully calibrated or used in a predictive manner. As discussed in FEIR App. 5A and the Certification (DCP.AA1.2.00001, pp. 172, 177), the proposed operations criteria and the mitigation are intended to minimize and mitigate the potential impacts of operating the north Delta intakes. The real-time decision-making specific to the north Delta intake operations will be mainly associated with reviewing real-time abiotic and fish monitoring data and ensuring proposed weekly, daily, and sub-daily operations are consistent with the permitted criteria and within the effects analyzed in the permits (FEIR Ch. 3, *Description of the Proposed Project and Alternatives* (DCP.D1.1.00010, p. 3-156)). **[A3-8, A3-49]**

Response: TUCOs Do Not Demonstrate Noncompliance. As described in the Certification (DCP.AA1.2.00001, pp. 99–100, 116–117), a TUCO does not violate the conditions found in the water right holder's underlying permit or license, and TUCOs have historically been accompanied by other legal actions that prevent inconsistency with existing water quality control plans.

DWR does not operate under TUCOs issued by the State Water Board as part of normal operations of the SWP. For example, the State Water Board has issued TUCOs in response to past extreme droughts, but that does not mean TUCOs must be included in proposed operations of the DCP. DWR does not anticipate that operations of the DCP will lead to an increase in frequency of TUCOs issued by the State Water Board. The primary reason for the State Water Board to issue a TUCO is a lack of sufficient stored water to meet all obligations, including public health and safety. Under these conditions in the future, consistent with historical operations during limited periods in which a TUCO was in place,

DWR would likely divert limited (less than 3,000 cubic feet per second [cfs]) SWP supplies solely from the south Delta facilities. This is because, as described in DCP Operations Plan (DCP.AA2.1.00006) and as modeled, during extreme drought conditions, the first 3,000 cfs of water diverted will be from the south Delta facilities, and the north Delta diversions will typically not operate. In addition, the DCP is not increasing deliveries (or exports) out of storage, and modeling results show that project operation will cause limited or no changes to upstream reservoir operations. Also, as described in Sec. 3.16.3, *Integration of North Delta Intakes with South Delta Facilities,* of FEIR Ch. 3 (DCP.D1.1.00010, pp. 3-145–3-146), the DCP will not increase releases from upstream storage. For all of these reasons, the DCP is not anticipated to either increase the frequency of TUCOs issued by the State Water Board in the future or operate during times when the State Water Board may issue TUCOs in the future. **[A3-49, AS-WS-38]**

3.4.1.2 State Water Board Has Different Considerations

Issue. Appellant alleges that the request from the State Water Board's Administrative Hearings Office (AHO) for additional modeling data demonstrates that DWR has not developed adequate evidence. **[A3-8, A3-50, AS-WS-39]**

Response: ER P1 Modeling Analysis Specific to Policy. The DSC's role in adjudicating an appeal under the substantial evidence standard is limited to determining whether substantial evidence in the record supports DWR's Certification on applicable Delta Plan policies. The State Water Board will consider the water rights petition in the context of other legal users of water (including water rights holders) and potential impacts on fish and wildlife; and if the petition is granted, it will set permit conditions. The standards for review and the decisions before the agencies are different. The AHO's request was for additional data to support State Water Board's consideration of potential permit conditions, whereas ER P1 requires only consideration of existing flow objectives and not analysis of potential future regulations. Substantial evidence presented in the Certification and elsewhere in the administrative record supports DWR's determination that the DCP is consistent with ER P1.

Additionally, as a matter of law, DWR cannot construct the DCP unless the State Water Board finds that the DCP is "consistent with the applicable water quality control plans, including any flow requirements established by the Bay-Delta Plan," as explained in AHO's July 31, 2024, Notice of Public Hearing on the Delta Conveyance Project (DCP.V3.1.00005, p. 6; see Wat. Code, §§ 85806(c)(2) ["Any order approving a change in the point of diversion of the State Water Project . . . from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria. . . ."], 85088 ["Until the board issues an order approving a change in the point of diversion of the State Water Project . . ., the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion."].) Therefore, unlike most covered actions, the Delta Reform Act ensures that, as a matter of law, the DCP is consistent with ER P1 because, based on the express requirements of the Delta Reform Act,

it cannot be implemented unless the State Water Board determines that it is consistent with the Bay-Delta WQCP's flow objectives. Furthermore, as stated in the Certification (DCP.AA1.2.00001, p. 120), when and if the Bay-Delta WQCP is revised, the SWP and the DCP are legally obligated to comply with any revised flow objectives properly assigned to it, and the SWP will be operated to do so. **[A3-8, A3-50, AS-WS-39]**

3.4.1.3 Consistency with ER P1 Is Demonstrated

Issue. Appellant alleges that the claimed inconsistency with ER P1 has a significant adverse impact on the Delta Reform Act's coequal goals. **[A3-8, A3-51, AS-WS-40]**

Response: Substantial Evidence Supports DCP Consistency with ER P1. Appellant's burden for an appeal is described in detail in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. While appellant alleges inadequacies in the approach and points to differing opinions by experts (see also Sec. 3.2.1.8, *Differing Opinions Among Experts*), they fail to demonstrate that DWR's approach is not supported by substantial evidence in the record. **[A3-8, A3-51, AS-WS-40]**

3.4.2 A6—Sacramento Area Sewer District (Policy ER P1)

See the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*; Sec. 3.4.1.2, *State Water Board Has Different Considerations*; and Sec. 3.4.1.3, *Consistency with ER P1 Is Demonstrated*. **[A6-8, A6-59, A6-60, A6-61]**

3.4.3 A7—City of Stockton (Policy ER P1)

See the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*; Sec. 3.4.1.2, *State Water Board Has Different Considerations*; and Sec. 3.4.1.3, *Consistency with ER P1 Is Demonstrated*. **[A7-8, A7-49, A7-50, A7-51]**

3.4.4 A5—San Francisco Baykeeper et al. (Policy ER P1)

3.4.4.1 Modeling Provides Substantial Evidence of Consistency

See the following section for responses to comments in A5 that are similar to those in A3: Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*. **[A5-22, A5-WS-26]**

Issue. Appellant alleges that compliance with D-1641 is inflated by the way in which project operations are modeled and that using averages over months obscures instances of noncompliance. **[A5-23]**

Response: Modeling Averages. As discussed in Sec. 5.2 of the Certification under *ER P1 Delta Flow Objectives* (DCP.AA1.2.00001, pp. 96–120), ER P1 requires compliance with

flow objectives, not salinity objectives. Regarding the allegations related to using averages over months, see the discussion of DWR's modeling testimony (DCP.V1.2.00219), which describes appropriate use of model results. DWR's method of computing and presenting summary statistics of exceedance probabilities with and without the DCP and then computing differences of exceedances is not flawed. Dr. Susan Paulsen's suggestion to compute time-aligned month-by-month differences for the 94-year simulation and then to compute exceedance statistics of those differences is not an appropriate use of modeling results that rely on CalSim 3. Sec. 3.1.3.1, *Delta Water Supply Project and Regional Wastewater Control Facility*, describes why the hydrologic modeling used in assessing potential impacts on Stockton's water treatment facilities was conducted using an appropriate timestep. Using a monthly timestep avoids the uncertainty introduced when attempting to apply a finer timestep to the analysis. **[A5-23]**

3.4.4.2 Consistency with ER P1 Is Demonstrated

Issue. Appellant alleges that existing Delta flows based on D-1641 are inadequate. Appellant also alleges DWR did not apply best available science when estimating water demands within the SWP delivery area. **[A5-24, A5-32, A5-WS-24, A5-WS-25, A5-WS-27]**

Response: Delta Flow Effectiveness. As outlined in Sec. 5.2 of the Certification under *ER P1* (DCP.AA1.2.00001, p. 96), ER P1 states "The State Water Resources Control Board's Bay-Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the State Water Board, the revised flow objectives shall be used to determine consistency with the Delta Plan." Nothing in the policy requires a covered action to question the effectiveness of the flow objectives or to commit to increased flows. As stated in the Certification (DCP.AA1.2.00001, p. 120), when and if the Bay-Delta WQCP is revised, the SWP and the DCP are legally obligated to comply with any revised flow objectives properly assigned to it, and the SWP will be operated to do so. See also Sec. 3.2.5.3, *Analysis of Water Demand and Use of Best Available Science*, for a discussion of how appellant fails to cite and discuss all the evidence relied on by DWR and how water demands and populations are taken into consideration when developing urban water management plans. **[A5-24, A5-32, A5-WS-24, A5-WS-25, A5-WS-27]**

3.4.5 A8—South Delta Water Agency (Policy ER P1)

See the following sections for responses to comments in A8 that are similar to those in A3: Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*; Sec. 3.4.1.2, *State Water Board Has Different Considerations*; and Sec. 3.4.1.3, *Consistency with ER P1 Is Demonstrated*. **[A8-13, A8-17, A8-28, A8-36, A8-38]**

3.4.5.1 Consistency with ER P1 Is Demonstrated

Issue. Appellant alleges that ER P1 requires DWR to demonstrate compliance with salinity-based flow-dependent objectives. **[A8-24, A8-25, A8-26, A8-27, A8-37]**

Response: Flow Objectives Definition. Appellant points to a staff draft determination from 2018 that was never finalized (DCP.AA2.7.00005). The language in the staff draft determination quoted by appellant is in a section addressing G P1 (b)(3), best available science, allegations and although ER P1 is mentioned—"… and ER P1 (Cal. Code Regs., tit. 23, § 5005) states that flow objectives therein shall be used to determine consistency with the Delta Plan"—it is clear that DSC staff was addressing a separate issue regarding salinity effects on agriculture related to best available science and not making a statement about the requirements to determine consistency with ER P1. The Certification (DCP.AA1.2.00001, pp. 96–99) provides support for the approach to ER P1 and the meaning of flow objectives. DWR has conservatively included X2 in its analysis because X2 requirements can be met by flow or by salinity. No other salinity-related objectives include similar flow standards, and as such, they were not included in the analysis. Implementation of the DCP requires the State Water Board to approve DWR's CPOD petition. The State Water Board, in considering whether to grant the petition, must determine that the project is consistent with D-1641 for the Bay-Delta WQCP. The ongoing CPOD hearing process, by itself, constitutes substantial evidence that the DCP will not be implemented unless it is consistent with the flow objectives as required by ER P1. **[A8-24, A8-25, A8-26, A8-27, A8-37]**

Issue. Appellant alleges that ER P1 requires DWR to describe how the DCP will be operated to address sea level rise, levee failures, and drought conditions. **[A8-29, A8-30, A8-31, A8-32, A8-33, A8-34, A8-35]**

Response: ER P1 Requirements. Nothing in ER P1 requires a covered action to analyze all potential future conditions as requested by appellant. ER P1 requires only consideration of existing flow objectives. Modeling assumptions for ER P1 are discussed in the Certification (DCP.AA1.2.00001, pp. 101–102). As stated in the Certification (DCP.AA1.2.00001, p. 120), when and if the Bay-Delta WQCP is revised, the SWP and the DCP are legally obligated to comply with any revised flow objectives properly assigned to it, and the SWP will be operated to do so. Appellant references an economic report for a different covered action that is not included in the administrative record, and any argument related to it should be disregarded (see Table 5-1 in Sec. 5, *Objections*). **[A8-29, A8-30, A8-31, A8-32, A8-33, A8-34, A8-35]**

3.4.6 A9—San Joaquin County et al. (Policy ER P1)

3.4.6.1 Consistency with ER P1 Is Demonstrated

See the following sections for responses to comments in A9 that are similar to those in A3: Sec. 3.4.1.1, *Modeling Provides Substantial Evidence of Consistency*; Sec. 3.4.1.2, *State*

Water Board Has Different Considerations; and Sec. 3.4.1.3, *Consistency with ER P1 Is Demonstrated*. **[A9-68, A9-69, A9-70, A9-71, A9-73, A9-79]**

See the following section for a response to a comment in A9 that is similar to that in A5: Sec. 3.4.4.1, *Modeling Provides Substantial Evidence of Consistency*. **[A9-68]**

Issue. Appellant alleges that ER P1 requires the demonstration of present and likely future compliance with D-1641 and lists several other alleged requirements of ER P1. **[A9-67]**

Response: Present Compliance. Regarding present compliance, ER P1 does not require a covered action to demonstrate "current" compliance with D-1641 as presented by appellant as being the SWP's past compliance. ER P1 only requires a covered action's consideration of existing flow objectives. DWR did include a discussion of the SWP's historical compliance for additional background context, but it is not required as part of ER P1. DWR's approach and analysis are presented in the Certification (DCP.AA1.2.00001, pp. 96–120). The other alleged requirements are outside of the scope of ER P1. **[A9-67]**

3.4.7 A4—Steamboat Resort (Policy ER P1)

3.4.7.1 ER P1 Requirements

Issue. Appellant alleges that ER P1 requires covered actions to avoid significant adverse impacts on downstream hydrodynamics, including water levels, tidal regimes, flow patterns, navigation, and recreation. **[A4-3, A4-WS-4, A4-WS-14]**

Response: Delta Flow Objectives Analyzed. As discussed in ER P1 and the Certification (DCP.AA1.2.00001, p. 96), ER P1 (a) states, "The State Water Resources Control Board's Bay-Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan" and does not require a covered action to provide additional discussion or analysis as stated by appellant. However, the DCP does analyze and avoid the alleged impacts as described in the FEIR—e.g., hydrodynamics in App. 5A, Sec. C, *One Dimensional Delta Hydrodynamics and Water Quality Modeling Results* (DCP.D1.1.00041); water levels in App. 5A, Sec. C (DCP.D1.1.00041, Table 5A-C1.4.4-D); flow in Ch. 5, *Surface Water* (DCP.D1.1.00032); water quality in Ch. 9, *Water Quality* (DCP.D1.1.00064); recreation in Ch. 16, *Recreation* (DCP.D1.1.00149); and marine traffic in Ch. 20, *Transportation* (DCP.D1.1.00168).

As shown in the Barge Transportation Study TM, Potential Barge Access Routes map (DCP.D4.1.00043), Steamboat Slough is not being proposed as a potential barge access route. **[A4-3, A4-WS-4, A4-WS-14]**

3.5 WR P1 (Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with WR P1 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.5.1 A3—County of Sacramento and SCWA (Policy WR P1)

3.5.1.1 WR P1 Consistency and the Coequal Goals

Issue. Appellant alleges that DWR failed to establish that all three of the applications of subdivisions (a)(1), (a)(2), and (a)(3) do not apply. **[A3-41, A3-47, AS-WS-37]**

Response: Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply. As demonstrated in DWR's Certification (DCP.AA1.2.00001, pp. 44–45), substantial evidence in the record supports DWR's finding that the DCP is consistent with WR P1 (Cal. Code Regs., tit. 23, § 5003(a)). WR P1 (a) states that "water shall not be exported from, transferred through, or used in the Delta if *all of the following* [three conditions as provided in subdivisions (a)(1), (a)(2), and (a)(3)] *apply*" (emphasis added). In other words, if one or more of these three conditions are not applicable, the DCP is consistent with WR P1 because the prohibition in subsection (a) would not apply. With respect to WR P1 (a)(2), substantial evidence in the record supports DWR's detailed findings that the need for the DCP was not significantly caused by one or more water suppliers failing to adequately contribute to reduced reliance on the Delta. Thus, DWR has determined, based on substantial evidence in the record, that the prohibition on exports in WR P1 (a) is not triggered. See Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, for specific responses to allegations regarding WR P1 (a)(1), and see Sec. 3.5.1.3, *WR P1 Subdivision (a)(2),* for specific responses to allegations regarding WR P1 (a)(2). **[A3-41, A3-47, AS-WS-37]**

Issue. Appellant alleges that the claimed inconsistency with WR P1 significantly and adversely affects the coequal goals. Appellant also alleges that the DCP is inconsistent with the coequal goals because it cannot achieve the goal to protect, restore, and enhance the Delta ecosystem. **[A3-7, A3-48]**

Response: DCP Consistent with WR P1 and Does Not Create Inconsistency with the Coequal Goals. DWR has determined, based on substantial evidence in the record, that the DCP is consistent with WR P1 (Cal. Code Regs., tit. 23, § 5003(a)). As demonstrated in DWR's Certification (DCP.AA1.2.00001, p. 189), Delta Plan Ch. 2 (as amended Jul. 2019) explains that "[t]he Council has chosen to apply its regulatory authority in a targeted manner, and does so in an effort to ensure that all significant activities occurring in whole or in part in

the Delta become better aligned over time with State policy priorities, including—and especially—the achievement of the coequal goals" (DCP.AA2.1.00105, p. 32). In other words, by demonstrating consistency with the Delta Plan regulatory policies, covered actions are contributing toward achievement of (or consistency with) the coequal goals. DWR has provided substantial evidence in this Certification demonstrating the DCP is consistent with all applicable Delta Plan regulatory policies. **[A3-7, A3-48]**

Response: DCP Need Not Achieve the Coequal Goals. As demonstrated in the Certification (DCP.AA1.2.00001, p. 190), a covered action, by itself, does not need to further both of the coequal goals to be consistent with the coequal goals, but it should avoid conflicting with either goal. **[A3-7, A3-48]**

3.5.1.2 WR P1 Subdivision (a)(1)

Issue. Appellant alleges that every water supplier who would receive water through the DCP must show that it has adequately contributed to both (1) reduced reliance on the Delta and (2) improved regional self-reliance. Appellant further alleges that DWR chose not to explicitly classify the 186 urban suppliers that only demonstrated improved regional self-reliance as having also established reduced reliance on the Delta. **[A3-42, AS-WS-35]**

Response: Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin. As demonstrated in the Certification (DCP.AA1.2.00001, p. 54–55), the plain language of WR P1 requires reduced reliance through regional self-reliance; the types of actions that reduce reliance are the same as those that improve regional self-reliance, and the statutory reduced reliance/improved regional self-reliance policy includes the overlapping measures to achieve both policies. California Water Code section 85021 established State policy regarding improved (increased) regional self-reliance as follows:

> Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

WR P1 (c)(2) includes a similar, more detailed list to explain how reduced reliance can be achieved. In addition, the Delta Plan glossary recognizes that improved regional self-reliance shows reduced reliance; and, mathematically, any increase in the percent of water demands in a water supplier's service area from local or regional sources (or from conservation and water use efficiency) means a reduction in the percent of demands met by supplies imported from the Delta. **[A3-42, AS-WS-35]**

Response: Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers. It is infeasible for many water suppliers that are one or more levels removed from the state water contractor water supplier to demonstrate reduced reliance in terms of supplies from the Delta watershed. As explained in

App. 4, Sec. 4.4, *Data for Assessment of Regional Self-Reliance*, of WR P1 Att. 1, DWR's initial data assessment found that some retail water suppliers are unable to explicitly quantify in their supply profile the exact volume of water originating from the Delta (DCP.AA1.2.00009, p. 12). While the wholesale water supplier that receives Delta supplies directly from the SWP may be able to show reduced reliance on SWP (Delta) supplies, wholesalers often have multiple sources of supply they serve to their member agencies, and the mix may vary by month. Thus, the exact mix of wholesale water that is served to the ultimate retail water supplier is often unknown. As a result, the volume of water from the Delta cannot be separated out from other water sources received from the wholesaler. This accounting limitation prevents some water suppliers from demonstrating reduced reliance on Delta through reporting of expected Delta water use. For these agencies, regional self-reliance was assessed and used as a proxy to determine whether water suppliers are reducing reliance on the Delta. While the exact volume of water originating from the Delta may not be determined, agencies receiving water from a wholesaler are generally able to quantify their non-Delta water supplies. The assessment of regional self-reliance was conducted for all suppliers that were otherwise unable to quantify their Delta reliance.

In addition, for water suppliers that make investments in regional projects or programs, it may be infeasible to quantify their demands on the regional or wholesale water supplier in a way that accurately reflects their individual contributions to reduced reliance on the Delta. As described in Metropolitan Water District's 2020 Urban Water Management Plan (UWMP) (DCP.AA2.1.00043, pp. A.11-2–A.11-3), due to the extensive, long-standing, and successful implementation of regional demand management and local resource incentive programs in Metropolitan's service area, this infeasibility holds true for Metropolitan's members as well their water supplier customers down the line to the retail supplier (DCP.AA2.3.00321, Sec C.6, pp. 49–54). Metropolitan's member agencies and retail subagencies individually contribute to reduced reliance on the Delta in two ways: through the development of local projects and demand management measures in their own service areas and through their investments in regional projects and programs through Metropolitan. Regional investments are funded through revenues from water purchases from Metropolitan or one or more of its member agencies. Metropolitan uses a portion of revenues from those purchases to fund projects and programs that contribute to the region's reduced reliance on Delta water supplies. Because some or all of these regional investments may not be constructed or implemented directly in a particular water supplier's service area, a water supplier's demands on Metropolitan or one or more of its member agencies will not accurately reflect that water supplier's total contributions to reduced reliance on supplies from the Delta watershed. It is infeasible for a water supplier that makes investments in regional projects and programs to quantify its individual contributions to reduced reliance and reflect them properly in its demands on Metropolitan or one or more of Metropolitan's member agencies. **[A3-42, AS-WS-35]**

Issue. Appellant alleges that DWR's analysis of subdivision (a)(1) dramatically understates failures to demonstrate reduced reliance on the Delta. Appellant further alleges that only 24.5% of reporting entities have demonstrated reduced reliance on the Delta, and therefore DWR's certification of consistency with WR P1 is not supported by substantial evidence. **[A3-7, A3-41, A3-42, AS-WS-34, AS-WS-36]**

Response: Substantial Evidence Supports DWR's Findings Under Subdivision (a)(1). As demonstrated in the Certification and in this section under *Reduced Reliance and Improved Regional Self-Reliance Two Sides of Same Coin,* substantial evidence supports DWR's findings under subdivision (a)(1), which show that nearly 96.9% of reporting entities have demonstrated reduced reliance in the manner set forth in WR P1 (c)(1). Of the 257 water suppliers evaluated, 249 suppliers that could receive water supply benefits as a result of the DCP demonstrated reduced reliance. A total of 63 water suppliers (56 urban and 7 agricultural) demonstrated reduced reliance in terms of the amount or percentage of water used from the Delta watershed, and 186 urban water suppliers demonstrated reduced reliance in terms of increased regional self-reliance. In total, 8 of the 257 water suppliers evaluated did not explicitly demonstrate reduced reliance in the manner set forth in WR P1 (c)(1). DWR determined that subdivision (a)(2) does not apply, and the DCP is consistent with WR P1 because the failure of the eight suppliers to show reduced reliance did not significantly cause the need for the DCP. **[A3-7, A3-41, A3-42, AS-WS-34, AS-WS-36]**

Issue. Appellant alleges that DWR has not supported its conclusions because numerous water suppliers report a reduction in Delta demand based on a reduced percentage of the suppliers' total projected water use. Appellant also alleges that the DWR's interpretation of WR P1 policy language providing that reduced Delta reliance may be reported as the reduction in the "percentage of water used, from the Delta watershed" is contrary to the plain language of Water Code section 85021. **[A3-11, A3-43, AS-WS-35]**

Response: Reduced Reliance May Be Demonstrated in Terms of Percentage of Water Used from Delta Watershed. As demonstrated in the Certification (DCP.AA1.2.00001, pp. 54–55), the plain language of WR P1 subsection (c)(1)(C) explicitly states that expected outcomes for reduced Delta reliance and improved regional self-reliance may be presented "as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed." Allowing for reporting in terms of the percentage of water used further supports the argument that reduced Delta reliance is achieved through actions that improve regional self-reliance (see *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin* in this section). **[A3-43, AS-WS-35]**

Response: DCP Must Demonstrate Consistency with Delta Plan Policy, Not Water Code. Appellant's allegation that WR P1 is insufficient to meet the directives of the Water Code constitutes a challenge to the DSC's regulation, not a challenge to DWR's Certification. Thus, it does not raise an appealable issue. Even if it did, the appeal fails.

Water Code section 85021 says nothing about how to quantify reduced reliance or improved regional self-reliance, so WR P1 is not inconsistent with the statutory policy.

As required by the covered action procedures in the California Code of Regulations, the Certification (DCP.AA1.2.00001) provides an analysis of consistency with all applicable Delta Plan regulatory policies, including WR P1.**[A3-11, A3-43]**

Issue. Appellant alleges that DWR overestimated population growth and future water demands, which casts doubt on demonstrating reduced reliance through the percentage of total projected demand that comprises Delta supplies. **[A3-7, A3-43, AS-WS-35]**

Response: Water Supplier UWMPs and AWMPs Represent Substantial Evidence for Estimates of Future Water Demands. Appellant's allegations center around CPOD testimony from Dr. Jeffrey Michael (DCP.V2.7.00001) regarding population growth estimates used for DWR's *Benefit-Cost Analysis of the Delta Conveyance Project* (DCP.D6.3.00077). The benefit-cost analysis explains that the technical approach relied on data in the 2020 UWMPs and Agricultural Water Management Plans (AWMPs) developed by the water suppliers. UWMPs and AWMPs are developed per the standards set forth in the Urban Water Management Planning Act and the Water Conservation Act of 2009 (SB X7-7), respectively. Demand and conservation forecasts in those plans are based on various economic, demographic, and climatic characteristics and produced following best management practices under consultation with local communities. DWR does not have authority over water supplier approaches to forecasting future demand, and different agencies take different approaches; however, these approaches cover the full spectrum of urban water use, including residential, commercial, industrial, institutional, and unmetered water uses. Water suppliers are the experts when it comes to developing demand forecasts that consider and incorporate their own local drivers of water demands, such as population and demographic trends, water use and efficiency trends, economic activity, land use changes, and future climate projections. In addition, water suppliers' plans undergo public review, and a public hearing for adoption—where local water agencies present their updated plan, including water supply, demand, and conservation measures, for public review, feedback, and formal approval by their governing board—is a required step before submitting it to DWR. In recognition of this, WR P1 (c)(1)(A), (c)(1)(B), and (c)(1)(C) all specifically identify UWMPs and AWMPs as sources of data that may be used to demonstrate consistency with (a)(1).

In addition, under the substantial evidence standard of review applicable to the Certification appeals, as long as the administrative record contains substantial evidence supporting DWR's finding of consistency, the DSC must deny the appeal, even if the available evidence could also support a different conclusion. Appellant must discuss all the record evidence supporting the Certification and show that none of it is substantial evidence. Appellant has not shown that the information in the UWMPs and AWMPs is speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous. **[A3-7, A3-43, AS-WS-35]**

3.5.1.3 WR P1 Subdivision (a)(2)

Issue. Appellant alleges that DWR's analysis of significance in (a)(2) is fundamentally flawed because it does not consider the maximum potential failure of 194 water suppliers. **[A3-7, A3-44, AS-WS-34, AS-WS-36]**

Response: Substantial Evidence Supports Identification and Quantification of Failures Under Subdivision (a)(2). The allegations regarding (a)(2) rely on the validity of appellant's argument that DWR understated water suppliers' failures to demonstrate reduced reliance presented under (a)(1). (See Sec. 3.5.1.2 for specific responses to allegations regarding WR P1 (a)(1)). DWR has determined, based on substantial evidence in the record, that 8 of the 257 water suppliers evaluated were unable to demonstrate reduced reliance in the manner set forth in (c)(1)(A), not 194 water suppliers. Additionally, DWR provides substantial evidence in the record that the maximum potential failures calculated for the eight water suppliers are both conservative and appropriate. See *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence* in this section. **[A3-7, A3-44, AS-WS-34, AS-WS-36]**

Response: Substantial Evidence of Improved Regional Self-Reliance Supports Findings Under Subdivision (a)(2). If one were to accept appellant's arguments under (a)(1), DWR's findings under (a)(2) are still supported by substantial evidence. WR P1 (a)(2) requires that any failures to demonstrate reduced reliance identified under (a)(1) be used to determine whether that failure has significantly caused the need for the export, transfer, or use. Any failures identified in (a)(1) were quantified to make an assessment under (a)(2). Even though it is infeasible for many water suppliers to demonstrate reduced reliance in terms of supplies from the Delta watershed (see Sec. 3.5.1.2 under *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*), substantial evidence of improved regional self-reliance presented by DWR in support of (a)(1) is still substantial evidence that the failure—whether by 8 or 194 suppliers—did not significantly cause the need for the DCP because all but 8 showed either reduced reliance or increased regional self-reliance. Thus, quantifying potential failures under (a)(2) would ultimately produce the same result, even if showing increased regional self-reliance were counted as a failure to show that (a)(1) does not apply. The analysis under (a)(2) is supported by substantial evidence, and appellant fails to show that the evidence of improved regional self-reliance is not substantial. **[A3-44]**

Issue. Appellant alleges that DWR's conclusion that the need for the DCP is unrelated to and exists irrespective of any failure to reduce reliance on the Delta is not supported by best available science. Appellant further alleges that DWR failed to apply best available science to its projections of climate change, seismic benefits, supply risk reduction, and population growth and water demands. **[A3-43, A3-44, A3-45, A3-46, AS-WS-36]**

Response: Other Causes of Need for DCP Not Relied on Solely to Support Findings Under Subdivision (a)(2). As explained in the Certification (DCP.AA1.2.00001, p. 71),

DWR found that WR P1 (a)(2) does not apply because the (a)(1) quantification of potential failure of some water suppliers to demonstrate reduced reliance in the manner set forth in WR P1 (c)(1) did not significantly cause the need for the DCP. The quantified theoretical maximum failures to demonstrate reduced reliance in the manner set forth in the policy, even collectively, are not significant; they did not cause the need for the DCP, let alone significantly cause the need under WR P1 (a)(2). In addition to those quantified findings, DWR presents in WR P1 Att. 2 (DCP.AA1.2.00010) other causes of the need for the project. DWR does not rely solely on this discussion to justify its findings under subdivision (a)(2); rather, it is further substantial evidence for the finding. Appellant fails to show that the additional evidence is not substantial. Thus, for that reason alone, appellant fails to carry their burden of proof. **[A3-44, AS-WS-36]**

Response: WR P1 Requires (a)(1) Analysis Be Based on UMWPs and AWMPs, Not Best Available Science. Appellant alleges that DWR did not rely on best available science in describing other causes of the need for the DCP with regards to WR P1 (a)(2). Under the Water Code, the Certification must be based on substantial evidence, not best available science (Wat. Code, § 85225.25). The plain language of WR P1 requires that the analysis of (a)(1) be based on UMWPs and AWMPs of water suppliers that will receive water from the DCP, not best available science. Water suppliers' UWMPs and AWMPs are prepared by expert public agencies to meet statutory requirements. A response regarding population growth and water demand can be found in Sec. 3.5.1.2 under *Water Supplier UWMPs and AWMPs Represent Substantial Evidence for Estimates of Future Water Demands*; and detailed best available science responses regarding climate change and seismic benefits are provided in Sec. 3.2.1.1, *Documented use of Best Available Science and Approach to Analysis*; Sec. 3.2.1.2, *Best Available Science Comments with Irrelevant Focus on the FEIR*; Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*; Sec. 3.2.1.7, *Use and Development of New Information*; and Sec. 3.2.1.8, *Differing Opinions Among Experts*. **[A3-43, A3-44, A3-45, A3-46, AS-WS-36]**

Issue. Appellant alleges that DWR's analysis of significance in (a)(2) should compare the maximum potential failure against forecasted north Delta exports because the failure would then represent a significant fraction of the total diversion of the DCP. Appellant also alleges that estimated diversions are highly uncertain and that future conditions "could substantially reduce the DCP's touted water supply benefit and increase the proportion of diversions that are necessitated by suppliers' failure to reduce reliance on the Delta." **[A3-46, AS-WS-36]**

Response: Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence. DWR provides substantial evidence in the record to support its analysis of significance under subdivision (a)(2). WR P1 (a)(2) requires that any failures to reduce reliance identified in (a)(1) be evaluated to determine whether those failures significantly caused the need for the export, transfer, or use (DCP.AA1.2.00001, p. 69). Of the 257 water suppliers evaluated, 8 water suppliers failed to demonstrate reduced reliance in the manner

set forth in WR P1(c)(1). A conservative estimate of the maximum potential failure to demonstrate reduced reliance totaled 40,198 acre-feet. As described in WR P1 Att. 1, Table 3.4-1, and Sec. 3.4.1 through Sec. 3.4.5 (DCP.AA1.2.00009, pp. 22–23), 30,424 acre-feet of the 40,198 acre-feet maximum potential failure quantified is based on the maximum contractual Table A amount of the individual water suppliers who have contracts with DWR to participate in the SWP, and 9,774 acre-feet is the amount of improved regional self-reliance that the non-contractor individual suppliers would need to demonstrate consistency. To determine whether this conservative failure significantly caused the need for the DCP, it was evaluated against two metrics: the total Table A contract amounts of SWP contractors participating in the DCP, and the total amount of demonstrated reduced reliance. These metrics represent appropriate "apples-to-apples" metrics for comparison against the maximum potential failure. Simply drawing comparisons between the maximum potential failure and future estimates of diversions from the new north Delta intakes is not appropriate. To generate a more "apples-to-apples" comparison, the 30,424 acre-foot portion of the maximum potential failure that is based on Table A contracts would need to be decreased proportionally based on the actual Table A allocations associated with appellant's scenarios. The resulting volumes would then need to be reduced again based on the proportion of total diversions coming from the north Delta intakes. These volumes could then be added to the 9,774 acre-feet of needed improved regional self-reliance and compared to diversions from the north Delta intakes. For example, under a 50% Table A allocation, the 30,424 acre-feet would decrease to 15,212 acre-feet. If 50% of the total diversions were assumed to be coming from the north Delta intakes, then the 15,212 acre-feet would decrease by half again to 7,606 acre-feet. In this example, the maximum failure would be 17,380 acre-feet (7,606 + 9,774), not 40,198 acre-feet (30,424 + 9,744). Without more detail, appellant's proposed comparison makes no sense. And as the example shows, even if appellant's comparison were appropriate once adjusted, it is still apparent that the failure of some suppliers under (a)(1) did not significantly cause the need for the DCP. Furthermore, appellant's preference for a different methodology is insufficient to prevail under the substantial evidence standard because "[t]he issue is not whether other methods might have been used, but whether the agency relied on evidence that a reasonable mind might accept as sufficient to support the conclusion reached…" (*N. Coast Rivers All. v. Marin Mun. Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 642 [internal citations omitted].) **[A3-46, AS-WS-36]**

Issue. Appellant alleges that DWR's analysis of (a)(2) is further flawed because it relies on the total Table A contract amount, which is based on "expired" water rights. **[A3-44, A3-46]**

Response: Permit Extension Irrelevant to Analysis of Significance Under Subdivision (a)(2). DWR's analysis of significance presented under (a)(2) is supported by substantial evidence in the record as demonstrated in the responses in this section. The potential maximum failure quantified by DWR is largely based on Table A contract amounts. Thus, the comparison is valid even if DWR's pending petition to extend the time under its SWP water rights to fully develop water use were denied. Appellant does not quantify a change in

diversions that would result from DWR's time extension petition. However, as demonstrated in the previous response under *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence* a proportional adjustment would need to be made to the maximum potential failure in order to draw a comparison. As the adjustment would be proportional, the same conclusion would apply; the failure of some suppliers under (a)(1) did not significantly cause the need for the DCP. See also Sec. 2.5.3, *Time Extension Petition*. **[A3-44, A3-46]**

3.5.1.4 WR P1 Subdivision (a)(3)

Issue. Appellant alleges that given the FEIR identifies significant and unavoidable impacts of the DCP, subdivision (a)(3) applies to the DCP. **[A3-7, A3-47, AS-WS-34, AS-WS-37]**

Response: DWR Acknowledges Subdivision (a)(3) Applies to DCP. While the FEIR demonstrates that the vast majority of impacts are reduced to a less-than-significant level, 16 out of the 175 overall impacts analyzed in the FEIR are significant and unavoidable impacts. These impacts remain significant primarily due to maintaining a conservative approach in the face of uncertainty and the lack of authority to require private parties to participate in mitigation programs. As described in the Certification (DCP.AA1.2.00001, p. 71), a covered action is consistent with WR P1 if one or more of the three subsections—(a)(1), (a)(2), or (a)(3)—do not apply. Because (a)(2) does not apply, the DCP is consistent with WR P1 and evaluation under (a)(3) is not necessary. **[A3-7, A3-47, AS-WS-34, AS-WS-37]**

3.5.1.5 Covered Action Relationship to Delta Reliance

Issue. Appellant alleges that the DCP inherently increases reliance on the Delta and therefore could never be consistent with WR P1. **[A3-41]**

Response: WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance. The plain language of WR P1(a)(1) and (a)(2) (DCP.AA1.2.00001, p. 44) asks whether one or more water suppliers that would receive water from the covered action have failed to adequately reduce reliance, as specified in (c)(1); and, if one or more has failed, it asks whether that failure has significantly caused the need for the covered action. The policy does not ask or require that each covered action by itself reduce reliance on water diverted from the Delta to be consistent. In other words, WR P1 requires analyses of water suppliers' UWMPs and AWMPs, not an analysis of the covered action. Appellant's argument would render any water supply covered action that maintains or increases water supply reliability fundamentally inconsistent with WR P1. Not only is this argument inconsistent with the plain language of WR P1 (a)(1), (a)(2), and (c)(1), but it would also thwart the coequal goal for the Delta of providing a more reliable water supply for California. In addition, this argument fails to show that the record evidence supporting the Certification is not substantial. **[A3-41]**

Issue. Appellant alleges that water suppliers are seeking to implement the DCP to maintain reliance on the Delta and that they expect to increase their reliance on the Delta relative to other imported waters supplies in a manner clearly inconsistent with WR P1. Appellant also

alleges that water suppliers intend to rely on Delta water supplies to support existing development in the face of other supply reductions and to accommodate future growth, directly in contradiction of the policy to reduce reliance on the Delta. **[A3-41, A3-46]**

Response: WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency. The plain language of WR P1 (DCP.AA1.2.00001, p. 44) does not require that water suppliers achieve a given amount of reduced reliance. Subdivision (a)(1) asks whether one or more water suppliers that would receive water from the covered action have failed to adequately reduce reliance, and subdivision (a)(2) asks whether that failure has significantly caused the need for the DCP. App. 4 of WR P1 Att. 1 (DCP.AA1.2.00009, pp. A4-15–A4-16) details the specific metrics used to determine whether reduced reliance is adequately demonstrated through a percent or volumetric reduction in Delta supplies or a percent or volumetric increase in regional self-reliance. **[A3-41, A3-46]**

Response: Argument Regarding Inherent Increase in Reliance Is Speculative. Under WR P1(c)(1), suppliers can show reduced reliance either as a reduction in volume of water received from the Delta *or as a percent of total supplies*. Thus, even if the DCP were to increase long-term average SWP supplies from the Delta,[2] it does not follow that suppliers receiving those supplies would increase their reliance. If local demands increase in a water supplier's service area, their reliance on SWP may still decrease as a percent of their overall supplies, even if the volume of water from the SWP were to increase over the same period. In addition, this speculative argument fails to discuss the record evidence and show that it is not substantial. **[A3-41, A3-46]**

Issue. Appellant alleges that, through DCP, water suppliers plan to increase their reliance on the Delta during catastrophic events that result in interruptions of Delta water supplies. Appellant further alleges that DWR performed only a cursory analysis of the impacts that project operations under such conditions would have on Delta water users and Delta recovery. Appellant also alleges that water suppliers intend to rely on Delta water supplies to support existing development in the face of other supply reductions and to accommodate future growth, directly in contradiction of the policy to reduce reliance on the Delta. **[A3-45, AS-WS-36]**

[2] Modeling results show that under the 2070 scenario with climate change and sea level rise, the DCP would not increase SWP supplies south of the Delta relative to current long-term averages. Instead, it would largely mitigate the otherwise considerable long-term average reductions in SWP supplies (DCP.D3.3.00009). CEQA requires use of the "existing conditions" baseline to analyze environmental impacts, which for the DCP is the year 2020, when environmental review began. But the DCP did not exist then and would not be operational until nearly two decades from now. Thus, using the 2020 baseline comparison to argue that the DCP will increase SWP supplies in the future is unrealistic.

Response: WR P1 Does Not Require Reduced Reliance to Be Evaluated Under Different Future Scenarios. The plain language of WR P1 (DCP.AA1.2.00001, p. 44) does not require that water suppliers demonstrate reduced reliance under all potential future conditions such as during catastrophic events. In addition to the allegation of water supplier intent being speculative, it is irrelevant to meeting appellant's burden to discuss the record evidence supporting the Certification and show that it is not substantial. Even if appellant had produced evidence that water suppliers that would receive water from the DCP intended to increase reliance on SWP (Delta) supplies in the wake of catastrophe or to support future growth, that assertion still fails to meet the appellant's burden of proof because under the substantial evidence standard, the DSC must reject appeals if substantial record evidence supports DWR's Certification, even if the same evidence would support the opposite conclusion. In addition, WR P1 does not require analysis of the impacts of a water supply covered action on diverters, let alone in the wake of a catastrophe, so that appellant fails to raise an appealable issue. **[A3-45, AS-WS-36]**

3.5.2 A6—Sacramento Area Sewer District (Policy WR P1)

See the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.5.1.1, *WR P1 Consistency and the Coequal Goals*, under *Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply*, under *DCP Consistent with WR P1 and Does Not Create Inconsistency with the Coequal Goals*, and under *DCP Need Not Achieve the Coequal Goals*; Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, under *Substantial Evidence Supports DWRs Findings Under Subdivision (a)(1)*, under *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin*, under *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*, under *Reduced Reliance May Be Demonstrated in Terms of Percentage of Water Used from Delta Watershed*, under *DCP Must Demonstrate Consistency with Delta Plan Policy, Not Water Code*, and under *Water Supplier UWMPs and AWMPs Represent Substantial Evidence for Estimates of Future Water Demands*. **[A6-7, A6-49, A6-51, A6-50, A6-57, A6-58]**

See also the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.5.1.3, *WR P1 Subdivision (a)(2)*, under *Substantial Evidence Supports Identification and Quantification of Failures Under Subdivision (a)(2)*, under *Substantial Evidence of Improved Regional Self-Reliance Supports Findings Under Subdivision (a)(2)*, under *Other Causes of Need for DCP Not Relied on Solely to Support Findings Under Subdivision (a)(2)*, under *WR P1 Requires (a)(1) Analysis Be Based on UMWPs and AWMPs, Not Best Available Science*, under *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence*, and under *Permit Extension Irrelevant to Analysis of Significance Under Subdivision (a)(2)*. **[A6-7, A6-52, A6-53, A6-56]**

See also the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.5.1.4, *WR P1 Subdivision (a)(3)*, under *DWR Acknowledges Subdivision (a)(3) Applies to DCP*, and Sec. 3.5.1.5, *Covered Action Relationship to Delta Reliance*, under *WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance*, under *WR P1 Does Not Require Reduced Reliance to Be Evaluated Under Different Future Scenarios*, and under *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency.* **[A6-7, A6-49, A6-54, A6-55, A6-57]**

3.5.3 A7—City of Stockton (Policy WR P1)

See the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.5.1.1, *WR P1 Consistency and the Coequal Goals*, under *Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply,* under *DCP Consistent with WR P1 and Does Not Create Inconsistency with the Coequal Goals*, and under *DCP Need Not Achieve the Coequal Goals*; and Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, under *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin*, under *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*, under *Reduced Reliance May Be Demonstrated in Terms of Percentage of Water Used from Delta Watershed*, under *DCP Must Demonstrate Consistency with Delta Plan Policy, Not Water Code*, and under *Water Supplier UWMPs and AWMPs Represent Substantial Evidence for Estimates of Future Water Demands*. **[A7-7, A7-39, A7-40, A7-41, A7-47, A7-48]**

See also the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.5.1.3, *WR P1 Subdivision (a)(2)*, under *Substantial Evidence Supports Identification and Quantification of Failures Under Subdivision (a)(2)*, under *Substantial Evidence of Improved Regional Self-Reliance Supports Findings Under Subdivision (a)(2)*, under *Other Causes of Need for DCP Not Relied on Solely to Support Findings Under Subdivision (a)(2)*, under *WR P1 Requires (a)(1) Analysis Be Based on UMWPs and AWMPs, Not Best Available Science*, under *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence*, and under *Permit Extension Irrelevant to Analysis of Significance Under Subdivision (a)(2)*; Sec. 3.5.1.4, *WR P1 Subdivision (a)(3)*, under *DWR Acknowledges Subdivision (a)(3) Applies to DCP*; and Sec. 3.5.1.5 under *WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance*, under *WR P1 Does Not Require Reduced Reliance Be Evaluated Under Different Future Scenarios*, and under *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency.* **[A7-7, A7-39, A7-42, A7-43, A7-44, A7-45, A7-46, A7-47]**

3.5.4 A5—San Francisco Baykeeper et al. (Policy WR P1)

See the following sections for responses to comments in A5 that are similar to those in A3: Sec. 3.5.1.1, *WR P1 Consistency and the Coequal Goals*, under *Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply* and under *DCP Consistent with WR*

P1 and Does Not Create Inconsistency with the Coequal Goals; Sec. 3.5.1.3, *WR P1 Subdivision (a)(2)*, under *Other Causes of Need for DCP Not Relied on Solely to Support Findings Under Subdivision (a)(2)*, under *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence*, and under *Substantial Evidence Supports Identification and Quantification of Failures Under Subdivision (a)(2)*; Sec. 3.5.1.4, *WR P1 Subdivision (a)(3)*, under *DWR Acknowledges Subdivision (a)(3) Applies to DCP*; and Sec. 3.5.1.5, *Covered Action Relationship to Delta Reliance*, under *WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance* and under *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency.* **[A5-17, A5-18, A5-19, A5-20, A5-WS-9, A5-WS-11, A5-WS-14, A5-WS-15]**

See the following section for a response to a comment in A5 that is similar to that in A3: Sec. 3.5.1.5 under *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency*. These allegations related to the adequacy of water supplier contributions to reduced reliance are a new argument introduced in appellant's written statement that was not included in the original appeal. **[A5-WS-14]**

3.5.4.1 WR P1 Subdivision (a)(1)

See the following sections for responses to comments in A5 that are similar to those in A3: Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, under *Substantial Evidence Supports DWR's Findings Under Subdivision (a)(1),* under *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin*, under *Demonstrating Reduced Reliance in Terms of Water Used from the Delta Watershed Infeasible for Many Water Supplier*s, and under *Reduced Reliance May Be Demonstrated in Terms of Percentage of Water Used from Delta Watershed.* **[A5-18, A5-20, A5-WS-8, A5-WS-9, A5-WS-10]**

Issue. Appellant alleges that DWR only tabulated water demands for suppliers that failed to submit a UWMP or those that could not demonstrate improved regional self-reliance. Appellant also alleges that DWR's assessment of water supplier demands is not supported by substantial evidence because total demand cannot be easily calculated. **[A5-19]**

Response: DWR's Assessment of Water Suppliers' Demands Complete and Supported by Substantial Evidence. App. 2, Table A.2-4 of WR P1 Att. 1 (DCP.AA1.2.00009, pp. A2-9-A2-15) lists all of the data sources used in DWR's analysis, including those used to tabulate total demands for each water supplier. In addition, citations to all of the water suppliers UWMPs and AWMPs used in DWR's analysis of reduced reliance are provided in the Supporting Documents for Table A.2-4 (DCP.AA1.2.00009, pp. A2-17–A2-58). Each citation includes a link to the document as well as its corresponding document title in the supporting record. Appellant fails to discuss that voluminous evidence in the record and show that it is not substantial. **[A5-19]**

Issue. Appellant alleges that DWR arbitrarily selected different metrics and data sources in order to demonstrate reduced reliance under subdivision (a)(1). **[A5-WS-8, A5-WS-11, A5-WS-13]**

Response: The Argument Fails on Merits Because Analysis Methods and Assumptions Consistent and Supported by Substantial Evidence. This issue was raised for the first time in appellant's written submission and is therefore waived (see Sec. 1, *Introduction*, for discussion of written submission requirements). Moreover, to show consistency with WR P1, DWR used the information in the UWMPs and AWMPs of every water supplier that could receive water from the DCP, directly or indirectly, as WR P1(a)(1) and (c)(1) require. Those data sources are not arbitrary; they are mandatory. In addition, App. 4 (DCP.AA1.2.00009, pp. A4-8–A4-17) of WR P1 Att. 1 details the methods and assumptions DWR used to evaluate consistency with WR P1 subdivision (a)(1).

Data relevant to demonstrating consistency with WR P1 for urban water suppliers was collected directly from supplier UWMPs. Data collected included supplier information (water supplier, water provider type, etc.), baseline water use (volume and percentage of total demand), and forecasted water use through 2040 (volume and percentage; 2045 optional).

Data from UWMPs that followed the DWR format proposed in App. C, *Example Approach to Demonstrate Reduced Delta Reliance*, of DWR's *Urban Water Management Plan Guidebook 2020* (2020 UWMP Guidebook) were taken directly from supplier plans and used for this analysis. Table C-4 of the 2020 UWMP Guidebook App. C (DCP.AA2.1.00032, p. C-22) summarizes reliance on supplies from the Delta watershed as both a total volume as well as a percentage of the total water supply for the region. If Delta reliance numbers were not reported in the suppliers' UWMP using the proposed format, the supply and demand sections of the UWMP were reviewed to determine whether data were presented at a level of detail suitable for calculating Delta water use. The data were used to determine either a percent or volumetric reduction in Delta water use relative to the baseline for current and projected water uses. Under WR P1, individual suppliers are contributing to reduced reliance based on the following metrics: (1) Delta water use decreases both as a volume as well as a percentage of total water supply relative to the baseline, (2) Delta water use increases as a volume but decreases as a percentage of total water supply relative to the baseline, or (3) Delta water decreases as a volume but increases as a percentage of the total water supply relative to the baseline.

As described in Sec. 3.5.1.2, *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*, many retail water suppliers are unable to explicitly quantify supplies originating from the Delta. For suppliers unable to quantify Delta water use, regional self-reliance numbers were used to determine whether a supplier was increasing its non-Delta use over time, which indicates that Delta water use is being reduced through improved self-reliance.

Data from water supplier UWMPs that followed the DWR format proposed in App. C of DWR's 2020 UWMP Guidebook were taken directly and used for this analysis. 2020 UWMP Guidebook Table C-3 (DCP.AA2.1.00032, p. C-19) summarizes water supplies that contribute to regional self-reliance through various measures such as water use efficiency, recycling, advanced water technologies, etc. The supplies contributing to regional self-reliance were tracked both as a volume and as a percent of the service area water demands. If regional self-reliance numbers were not reported in the suppliers' UWMP using the proposed format, the supply and demand sections of the UWMP were reviewed to determine whether data were presented at a level of detail suitable for calculating regional self-reliance. Projected water supplies for 2020 through 2045 were collected and compared against the projected demands across the same time period. Water suppliers who demonstrated greater projected percentages and/or volumes of supplies contributing to regional self-reliance relative to the baseline were considered to be reducing reliance on the Delta.

Data relevant to demonstrating consistency with WR P1 for agricultural water suppliers were collected directly from supplier AWMPs. Data collected included agency information (water supplier, water provider type, etc.), baseline Delta water use (volume and percentage of total demand), and forecasted water use under future conditions.

Baseline and forecasted Delta agricultural water use were used to quantify reduced reliance on the Delta. App. C, *Possible Approach to Demonstrate Reduced Delta Reliance*, of DWR's *Guidebook to Assist Agricultural Water Suppliers to Prepare a 2020 Agricultural Water Management Plan* (2020 AWMP Guidebook) (DCP.AA2.1.00025), provided guidance to agricultural water suppliers on reporting Delta reliance data. Data from the AWMPs following the DWR format were taken directly. AWMPs that did not follow the DWR guidance but still included a reduced reliance component were evaluated to see if the required data was provided. Reduced Delta reliance for agricultural water suppliers was evaluated using the same metrics as for urban water suppliers: (1) Delta water use decreases both as a volume as well as a percentage of total water supply relative to the baseline, (2) Delta water use increases as a volume but decreases as a percentage of total water supply relative to the baseline, or (3) Delta water decreases as a volume but increases as a percentage of the total water supply relative to the baseline. Since AWMPs do not provide projected water use estimates outside of the Delta reliance context, a regional self-reliance analysis was not conducted for AWMPs.

In addition, WR P1 Att. 1 (DCP.AA1.2.00009, p. 7) used the same methodologies, assumptions and data sources referenced above to reanalyze water suppliers that were initially found to have non-quantitative or inconclusive results. These discussions demonstrate that a logical and consistent approach was applied throughout DWR's analyses. **[A5-WS-8, A5-WS-11, A5-WS-13]**

Issue. Appellant alleges that DWR selected an unrepresentative baseline in order to demonstrate reduced reliance under subdivision (a)(1). **[A5-WS-11, A5-WS-12]**

Response: Argument Fails on Merits Because DWR's Use of 2010 Baseline Appropriate and Supported by Substantial Evidence. This baseline issue was raised for the first time in appellant's written submission and is therefore waived (see Sec. 1 for discussion of written submission requirements). Moreover, the Sacramento–San Joaquin Delta Reform Act of 2009 was enacted in 2009 and became effective in 2010, so it is logical that reduced reliance be measured against that baseline. And WR P1 (c)(1) admonishes urban and agricultural water suppliers that may receive water from a water management covered action to begin reporting reduced reliance in their 2015 UWMPs and AWMPs. The only logical baseline that could have been included in the 2015 plans was from the 2010 plans. In the 2013 Delta Plan, the DSC expressly stated as much:

> The implementation of programs and projects that result in a significant reduction in the amount of water used, or in the percentage of water used, from the Delta watershed (evaluated at the local, regional, and statewide levels) will be the foundational measures for assessing the State's progress in achieving these policies. *The baseline for this evaluation will be existing water use and supplies, as documented in the most recently adopted urban and agricultural water management plans*. (See Appendix G, Achieving Reduced Reliance on the Delta and Improved Regional Self-Reliance.)
>
> (DCP.D3.1.02122, p. 75, emphasis added.)

When the Delta Plan was adopted in 2013, the most recent UWMPs and AWMPs were the 2010 versions. Under the heading "Initial Assessment of Delta Water Use" under the current Water Supply Performance Metric, the DSC's initial report from the 2020 UWMPs and AWMPs in the SWP service area south of the Delta also relies on the 2010 baseline used in the 2020 plans.

Accordingly, App. C of DWR's 2020 UWMP Guidebook (DCP.AA2.1.00032, pp. C-6–C-24) provides guidance for urban water suppliers in setting an appropriate baseline to evaluate reduced reliance or improved regional self-reliance. This guidance includes considerations for using average year estimates to avoid actual data that may be impacted by specific hydrologic conditions. The example data analysis presented in Sec. C.3.5 of App. C uses a 2010 baseline and describes its selection based on the Delta Reform Act being enacted in 2009 and becoming effective in 2010 and the need for a baseline that can be used to evaluate plan data commencing in 2015 per WR P1 (c)(1)(C) (DCP.AA2.1.00032, p. C-13). App. C of the 2020 AWMP Guidebook (DCP.AA2.1.00025, pp. 217–218) provides baseline guidance for agricultural water suppliers. Additionally, as described in *Overview of Outreach/Guidebook Development* of the Certification, the recommended methodologies presented in both guidebooks were developed in collaboration with DSC staff and drafts of the guidebooks were reviewed by DSC staff before they were finalized by DWR and made public (DCP.AA1.2.00001, p. 49). Appellant fails to show how a 2010 baseline is arbitrary or not based on substantial evidence. **[A5-WS-11, A5-WS-12]**

3.5.5 A8—South Delta Water Agency (Policy WR P1)

See the following sections for responses to comments in A8 that are similar to those in A3: Sec. 3.5.1.1, *WR P1 Consistency and the Coequal Goals*, under *Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply* and *DCP Consistent with WR P1 and Does Not Create Inconsistency with the Coequal Goal*; Sec. 3.5.1.3, *WR P1 Subdivision (a)(2)*, under *Other Causes of Need for DCP Not Relied on Solely to Support Findings Under Subdivision (a)(2)* and *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence*; Sec. 3.5.1.5, *Covered Action Relationship to Delta Reliance*, under *WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance*, under *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency*, and under *WR P1 Does Not Require Reduced Reliance Be Evaluated Under Different Future Scenarios.* **[A8-14, A8-20, A8-21, A8-22, A8-23, A8-WS-4]**

3.5.5.1 WR P1 Subdivision (a)(1)

See the following sections for responses to comments in A8 that are similar to those in A3: Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, under *Substantial Evidence Supports DWR's Findings Under Subdivision (a)(1)*, under *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin*, and under *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*. **[A8-19]**

Issue. Appellant alleges that DWR failed to demonstrate consistency with subdivision (a)(1) because the compliance of water suppliers' plans with Water Code requirements for UWMPs and AWMPs does not provide compliance with WR P1 (c)(1)(B). **[A8-20]**

Response: Substantial Evidence Supports DWRs Findings Under Subparagraph (c)(1)(B). As described in DWR's Certification (DCP.AA1.2.00001, p. 62), by completing a UWMP that has been reviewed by DWR for compliance with the applicable requirements of California Water Code division 6, part 2.55, *Sustainable Water Use and Demand Reduction*, part 2.6, *Urban Water Management Planning*, and part 2.8, *Agricultural Water Management Planning*, water suppliers are inherently demonstrating consistency with WR P1 (c)(1)(B). DWR's Certification (DCP.AA1.2.00001, p. 62–65) provides an overview of the DWR plan review process and a list of the specific California Water Code requirements that demonstrate the identification, evaluation, and implementation of programs and projects. Additionally, citations to all the water supplier UWMPs and AWMPs used in DWR's analysis of reduced reliance are provided in the WR P1 Attachment 1 Supporting Documents (DCP.AA1.2.00009, pp. A2-17–A2-58), and each citation includes a link to the document as well as its corresponding document title in the supporting record. **[A8-20]**

Response: Substantial Evidence Supports Finding of Consistency Under (a)(2), Regardless of Findings Under (c)(1)(B). As demonstrated in the responses in Sec. 3.5.1.2 DWR quantified reduced reliance and improved regional self-reliance as a reduction in the volume or percent of supplies for all but eight water suppliers. That quantitative evidence is

substantial evidence that, even when considering *all* the water suppliers that did not have all the information specified in (c)(1)(B), those failures did not significantly cause the need for the DCP. In addition, DWR supported its (a)(2) finding with substantial evidence regarding the significant causes of the need for the DCP, which predate the Delta Reform Act and the Delta Plan and exist regardless of WR P1—namely, the adverse SWP water supply impacts of climate change, sea level rise, and seismic risk. The appellant fails to show how that record evidence is not substantial. **[A8-20]**

3.5.6 A9—San Joaquin County et al. (Policy WR P1)

See the following sections for responses to comments in A9 that are similar to those in A3: Sec. 3.5.1.1, *WR P1 Consistency and the Coequal Goals*, under *Substantial Evidence Supports Conclusion Subdivision (a)(2) Does Not Apply* and *DCP Consistent with WR P1 and Does Not Create Inconsistency with the Coequal Goals*. **[A9-78, A9-83, A9-85, A9-86, A9-89]**

See also following sections for responses to comments in A9 that are similar to those in A3: Sec. 3.5.1.3, *WR P1 Subdivision (a)(2)*, under *Analysis of Significance Under Subdivision (a)(2) Supported by Substantial Evidence*; Sec. 3.5.1.4, *WR P1 Subdivision (a)(3)*, under *DWR Acknowledges Subdivision (a)(3) Applies to DCP*; and Sec. 3.5.1.5, *Covered Action Relationship to Delta Reliance*, under *WR P1 Does Not Require That the Covered Action Itself Reduce Delta Reliance* and *WR P1 Does Not Specify Amount of Reduced Reliance Necessary to Demonstrate Consistency*. **[A9-84, A9-85, A9-86, A9-87, A9-89, A9-WS-10]**

3.5.6.1 WR P1 Subdivision (a)(1)

See the following sections for responses to comments in A9 that are similar to those in A3: Sec. 3.5.1.2, *WR P1 Subdivision (a)(1)*, under *Reduced Reliance May Be Demonstrated in Terms of Percentage of Water Used from Delta Watershed*, under *Reduced Delta Reliance and Improved Regional Self-Reliance Two Sides of Same Coin*, under *Demonstrating Reduced Reliance in Terms of Water Used from Delta Watershed Infeasible for Many Water Suppliers*, and under *DCP Must Demonstrate Consistency with Delta Plan Policy, Not Water Code*. **[A9-78, A9-84, A9-86, A9-88, A9-89, A9-WS-8, A9-WS-9, A9-WS-10]**

See the following section for responses to comments in A9 that are similar to those in A5: Sec. 3.5.4.1, *WR P1 Subdivision (a)(1)*, under *DWR's Assessment of Water Suppliers' Demands Complete and Supported by Substantial Evidence*. **[A9-88, A9-WS-8]**

Issue. Appellant alleges that the Certification lacks substantial evidence because the DCP is not included in the water suppliers' calculations of reduced reliance completed under subdivision (a)(1). **[A9-78, A9-88]**

Response: WR P1 Does Not Require Covered Action Be Included in Evaluation of Reduced Reliance. WR P1 does not require that water suppliers include the covered action

in their analyses of reduced reliance. WR P1 subdivision (a)(1) asks if one or more water suppliers that would receive water as a result of the covered action have failed to adequately contribute to reduced reliance. The plain language demonstrates that the policy requires a snapshot analysis based on past and current UWMP and AWMP data, not on a future projection that includes the covered action or other speculative future conditions. See Sec. 3.5.1.5 under *WR P1 Does Not Require Reduced Reliance Be Evaluated Under Different Future Scenarios*. Furthermore, the analysis under WR P1 subdivision (a)(2), which asks whether the failures to reduce reliance established in (a)(1) significantly caused the need for the covered action effectively, becomes circular if that same covered action is included in the initial accounting of failures. App. C of DWR's 2020 UWMP Guidebook (DCP.AA2.1.00032, p. C-21), which was developed through a collaborative process with DSC staff, provides guidance for water suppliers on how to handle future covered action supplies in their analyses. Specifically, the guidance recommends that water suppliers exclude a covered action from their reduced reliance analyses until it has demonstrated consistency with the Delta Plan (DCP.AA2.1.00032, p. C-21). **[A9-78, A9-88]**

3.6 ER P5 (Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with ER P5 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.6.1 A5—San Francisco Baykeeper et al. (Policy ER P5)

3.6.1.1 Consideration of Golden Mussel (*Limnoperna fortunei*)

Issue. Appellant alleges that the DCP is inconsistent with ER P5. Appellant also alleges that nonnative invasive species are likely to benefit from the DCP and that golden mussel and invasive fish species benefit from lower, more stagnant river flows, and large infrastructure projects. **[A5-11, A5-27, A5-WS-29]**

Response: Nonnative Invasive Species, Including Golden Mussel, Fully Considered. Contrary to appellant's allegation, substantial evidence demonstrates that the DCP alone will not cause beneficial conditions for the establishment of golden mussel. CDFW's California's Invaders: Golden Mussel webpage (DCP.AA2.1.00069) displays a map of mussel detections that records and displays data points of golden mussel discoveries rapidly spreading throughout California. These data point clusters indicating golden mussel sightings begin in the Delta and continue down to Southern California—showing evidence in real time that golden mussel is proliferating throughout the Delta and California prior to the DCP being constructed or operated. In fact, the *Golden Mussel Response Framework*

(DCP.AA2.1.00072, p. 9) states "golden mussel are anticipated to spread within the Delta and its tributaries, and via the state and federal water conveyance systems because there are no mechanisms to prevent it…."

As described in the *State- and Department-Wide Invasive Species Programs* section of the Certification (DCP.AA1.2.00001, p. 159), DWR actively participates in various multiagency and statewide efforts, such as the Golden Mussel Task Force, with the same goals of managing the treatment of invasive nonnative species as threats develop. The *Golden Mussel Response Framework* (DCP.AA2.1.00072, p. 13) states that CDFW is actively in the process of finalizing its annual statewide invasive mussel early-detection monitoring plans, which will be implemented statewide once finalized.

The DCP, once it is constructed, will be part of the SWP; therefore, in implementing the DCP, DWR must comply with all applicable SWP programs, plans, and other commitments related to managing the potential for new introductions of or improved habitat conditions for nonnative invasive species (DCP.AA1.2.00001, p. 159). The Certification also details an assortment of plans, programs, and actions that provide substantial evidence that DWR has fully considered and included measures that, when implemented, will avoid exacerbating the impacts of preexisting nonnative invasive species and minimize the potential for new introductions of nonnative invasive species, consistent with ER P5 (DCP.AA1.2.00001, pp. 154–162). **[A5-11, A5-WS-29]**

Appellant alleges that "Golden Mussel and invasive fish species benefit from lower, more stagnant river flows." However, DWR's record indicates that there will be no significant changes to flow in the Delta. As discussed in FEIR Vol. 2, Ch. 4, *Response to Comment Tables* (DCP.D1.1.00249, pp. 48) and FEIR Vol. 1, Ch. 5, *Surface Water* (DCP.D1.1.00032, p. 5-26), simulated changes in river conditions demonstrate that long-term average monthly flows under project operations will be similar to existing conditions. **[A5-27]**

3.6.2 A9—San Joaquin County et al. (Policy ER P5)

3.6.2.1 Golden Mussel (*Limnoperna fortunei*) Management at Project Facilities Through State- and Department-Wide Invasive Species Programs

Issue. Appellant alleges that the DCP is inconsistent with ER P5. Appellant also alleges that there is no substantial evidence to support a finding that DWR has addressed how the DCP would not provide habitat for the golden mussel or how golden mussel would be controlled on and in Delta tunnel facilities. **[A9-10, A9-80, A9-WS-6, A9-WS-11]**

Response: DWR Committed to Managing Invasive Aquatic Species. As described in Sec. 3.6.1.1, *Consideration of Golden Mussel (*Limnoperna fortunei*)*, the *Golden Mussel Response Framework* (DCP.AA2.1.00072, p. 9) states that "while golden mussel are anticipated to spread within the Delta and its tributaries, and via the state and federal water

conveyance systems because there are no mechanisms to prevent it, overland spread of invasive mussels can be prevented." Ch. 4, *Protect, Restore, and Enhance the Delta Ecosystem*, of the Delta Plan (DCP.AA2.1.00020, p. 4-54) explains that "once introduced, nonnative invasive species are difficult and expensive to control, and often impossible to eradicate. Therefore, preventing introduction of new nonnative species is a priority." Substantial evidence in the Certification (DCP.AA1.2.00001, p. 161) explains that the *Quagga and Zebra Mussel Prevention Program for the State Water Project* (DCP.AA2.1.00083) exists to prevent the introduction of nonnative dreissenid mussel species into the SWP, which is owned, operated, and maintained by DWR. Additionally, DWR's Division of Operations and Maintenance hosts the Aquatic Nuisance Species Program (DCP.AA2.1.00076), which encompasses invasive species planning, prevention, surveillance, rapid response, and management in the SWP and the Sacramento–San Joaquin Delta and its tributaries to preserve the state's economic and ecological health.

The *Quagga and Zebra Mussel Prevention Program for the State Water Project* (DCP.AA2.1.00083), the *Golden Mussel Response Framework* (DCP.AA2.1.00072), the *Quagga and Zebra Mussel Rapid Response Plan for the State Water Project* (DCP.AA2.1.00077), and the *Quagga Mussel Control Plan for Pyramid Lake, Angeles Tunnel, and Castaic Lake* (DCP.AA2.1.00081) all describe methods for prevention, containment, population suppression, and eradication of mussels. The *Quagga and Zebra Mussel Rapid Response Plan for the State Water Project* (DCP.AA2.1.00077, p. K-1) outlines various control methods for mussels such as desiccation, thermal shock (heat), freezing, oxygen deprivation, benthic barrier mats, isolation curtains, manual removal, predation, and various chemical treatments—all of which could be used to achieve eradication or at least reduce the population level and control spread. The *Quagga and Zebra Mussel Rapid Response Plan for the State Water Project* (p. 2) also explains that "long-term monitoring and control of a permanent infestation will require a separate management plan developed specifically for the SWP and implemented by the individuals or organizations with authority and responsibility for managing the infested site(s). This plan is referred to as the Long-Term Mussel Management and Control Plan." As described in Sec. 3.6.1.1, the DCP will be a part of the SWP, and, in implementing the DCP, DWR must comply with all applicable SWP programs, plans, and other commitments, such as the Long-Term Mussel Management and Control Plan, to manage the potential for new introductions of or improved habitat conditions for nonnative invasive species (DCP.AA1.2.00001, p. 159). As detailed in the Certification (DCP.AA1.2.00001, pp. 156–157),

> The *Delta Conveyance Project Incidental Take Permit* (California Department of Fish and Wildlife 2025) also provides substantial evidence that DWR has fully considered, and measures are included that, when implemented, will avoid exacerbating the impacts of preexisting nonnative invasive species and minimize the potential for new introductions of nonnative invasive species. The language in this section, excerpted from the 2025 CDFW ITP, describes some of the more specific permit requirements pertaining

to nonnative invasive species. The mitigation measures (e.g., MM AQUA-1b and MM BIO-21) described in the *Covered Action Environmental Commitments, Mitigation Measures, and Compensatory Mitigation Plan Actions that Protect the Ecosystem from Nonnative Invasive Species* section also meet or exceed requirements delineated by California Fish and Game Code Section 2081(b) and California Code of Regulations, title 14, sections 783.2–783.8.

[A9-10, A9-80]

See Sec. 3.12.6.1, *Inconsistency with ER P5 Will Impair the Achievement of the Coequal Goals*, under *DCP Consistent with ER P5*, which explains that nonnative invasive species are already present in the covered action area, but DWR has fully considered the potential for introductions of or improved habitat conditions for nonnative invasive species, and measures are included that, when implemented, will avoid exacerbating the impacts of preexisting nonnative invasive species and minimize the potential for new introductions of nonnative invasive species. **[A9-80]**

Substantial evidence in the record details how intake structure facilities will be managed to remove debris and help avoid biofouling, which limits substrates mussels can attach to. The *Fish Screen Related Maintenance* section of the CER (DCP.D4.3.00001, p. 4-12) provides insight on screen and panel cleaning to remove algae growth, freshwater sponges, freshwater snails, and other biogrowth that are not cleaned by the automatic cleaning system or that populate on the inside or back of the various panels and screens. The information in the CER is related to managing nonnative invasive mussels because, as explained in FEIR Vol. 2, Ch. 4, *Response to Comment Tables* (DCP.D1.1.00248, p. 1811), "while unanticipated, should there be a need to address future infestations of mussels in a manner other than that described for screen maintenance in the EIR or project permits, [future infestations of mussels] would be addressed with necessary environmental compliance and permitting at that time." **[A9-80, A9-WS-6, A9-WS-11]**

3.7 G P1 (b)(4) (Adaptive Management)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with G P1 (b)(4) and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.7.1 A3—County of Sacramento and SCWA (Policy G P1 (b)(4))

3.7.1.1 Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty

Issue. Appellant alleges that the Certification is insufficient because, based on DISB comments on the FEIR, there is uncertainty related to the CMP or the methods described in the CMP are inadequate. **[A3-29, A3-30, AS-WS-18]**

Context. As described in the Delta Plan (DCP.AA2.1.00105, p. 35), "Decision making should be based on best available science, should account for risk and uncertainty, should acknowledge the dynamic nature of ecosystems, and should be responsive and adaptive to future change."

Response: Uncertainty Minimized Through Use of Adaptive Management. DWR has determined that the approach used for the DCP to address uncertainty is consistent with the definition of adaptive management in the Delta Reform Act and as cited in the Delta Plan. DWR has also reviewed guidance from the DISB (DCP.AA2.1.00099) on how to address deep uncertainty during decision-making and determined that the approach used in the FEIR and the adaptive management plans (AMPs) to address uncertainty is consistent with this guidance (DCP.AA1.2.00001, p. 175).

The FEIR includes the CMP and the North Delta Diversion Operations Adaptive Management and Monitoring Plan (OAMMP)—as described in Sec. 3.18, *Adaptive Management and Monitoring Program*, of FEIR Ch. 3, *Description of the Proposed Project and Alternatives* (DCP.D1.1.00010)—and both of these programs appropriately account for uncertainty throughout project design, construction, and operation and allow the integration of best available science and tools throughout project implementation. (FEIR Vol. 2, Ch. 3, *Common Responses*, Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review Issues* (DCP.D1.1.00222, p. 1-47)). Adaptive management allows DWR to incorporate future best available science into future management decisions and actions and to address uncertainties associated with those actions (DCP.AA1.2.00001, p. 173). **[A3-30, AS-WS-18]**

In the case of the CMP, G P1 (b)(4) Att. 2, *Compensatory Mitigation Plan Adaptive Management Plan* (CMP AMP) (DCP.AA1.2.00023) details DWR's process for informing additional studies and modifying components of the CMP to meet the CMP's objectives and better understand uncertainties concerning compensatory habitat mitigation creation and enhancement actions conducted to mitigate for impacts on species included in the CMP. Figure 3 of the attachment shows the adaptive management framework that was developed for this CMP AMP following the Delta Plan's adaptive management framework (DCP.D3.3.00013, p. 1B-2). In addition, the attachment includes descriptions of the relationship of the CMP to other agency programs, such as the Interagency Ecological Program's work on Delta fish and foodweb surveys and tidal wetland monitoring, and

explains the monitoring frequency and adjustment that will be used to ensure that the project continues to perform as expected after the initial 3-to-5-year establishment period to account for changing environmental conditions (e.g., floods, drought) and current status of performance standards. The attachment then describes that performance standards will be provided for each habitat type described in the CMP AMP, consistent with current USACE uniform performance standards for compensatory mitigation monitoring (33 C.F.R. part 332 (2008)). Monitoring categories include hydrologic, vegetation, and physical categories. Appellant fails to consider this substantial evidence in the administrative record regarding the ongoing processes in place to develop and improve the adaptive management program. **[A3-30, AS-WS-18]**

Response: Best Available Science Used in Adaptive Management. Appellant fails to acknowledge the substantial evidence that the FEIR and the Certification both document the use of best available science in adaptive management. The FEIR focused on minimizing uncertainty by using the best available science and reasonable methodologies available at the time of the preparation of the EIR and by identifying uncertainty as appropriate (DCP.AA1.2.00001, p. 175). The best available science, including multiple discussions of climate change, is used to develop reasonable conclusions and disclose impacts. In this way, the FEIR acknowledged and, to the extent feasible, minimized uncertainty in the impact analyses. (FEIR Vol. 2, Ch. 3, Common Response 1 (DCP.D1.1.00222, p. 1-47)).

In the case of CHABs, the discussion of Impact WQ-14: *Effects on Cyanobacteria Harmful Algal Blooms Resulting from Facility Operations and Maintenance* in FEIR Ch. 9, *Water Quality* (DCP.D1.1.00064), clearly characterizes the uncertainties that are inherent to the CHAB analysis because the current scientific understanding of CHABs in the Delta is incomplete. Nevertheless, that does not mean that the analysis lacks a solid scientific foundation. Impact WQ-14 is based on the best scientific information available for CHABs from past CHAB studies conducted in the Delta and elsewhere. In other words, uncertainty exists for some of the impacts evaluated in the EIR; and although this uncertainty is disclosed in the EIR, DWR relied on the best available scientific information and evidence (DCP.D1.1.00222, p. 1-48). **[A3-29]**

The Certification documents current direction from the DSC on addressing this uncertainty. DSC has continued to delve into better understanding CHABs in the Delta, and as described in Sec. 4.6.7, *New Information Relevant to Best Available Science*, of G P1 (b)(3) Att. 1 of the Certification (DCP.AA1.2.00021), in Oct. 2024, the DSC published *Cyanobacteria Harmful Algal Bloom Monitoring Strategy for the Sacramento–San Joaquin Delta* (DCP.AA2.10.00029), which was developed by a team of interagency authors and supported by the contributions of numerous individuals and groups with an interest in CHABs. This document describes a coordinated and strategic approach to monitoring CHABs in the Delta and provides specific recommendations on how to improve collaboration and monitoring efforts across the Delta. Appellant fails to confront this substantial evidence supporting

DWR's G P1 (b)(4) consistency determination and, therefore, fails to meet their burden of proof. **[A3-29]**

3.7.2 A6—Sacramento Area Sewer District (Policy G P1 (b)(4))

3.7.2.1 Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty

See the following section for responses to comments in A6 that are similar to those in A3: Sec. 3.7.1.1, *Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty*, under *Uncertainty Minimized Through Use of Adaptive Management*. **[A6-33, A6-34]**

3.7.3 A7—City of Stockton (Policy G P1 (b)(4))

See the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.7.1.1, *Use of Adaptive Management to Incorporate Best Available Science and Address Uncertainty*, under *Best Available Science Used in Adaptive Management* and *Uncertainty Minimized Through Use of Adaptive Management.* **[A7-27, A7-28]**

3.7.4 A9—San Joaquin County et al. (Policy G P1 (b)(4))

3.7.4.1 Funding for Adaptive Management

Issue. Appellant alleges that DWR has not proven that adequate funding will be available for adaptive management. **[A9-7, A9-WS-7]**

Response: Funding for Adaptive Management Is Required. Although appellant makes a variety of allegations related to funding of the DCP, the appealable issue under G P1 (b)(4) is whether DWR has documented that adequate resources will be available to fund the adaptive management process. As described in the Certification Sec. G P1 (b)(4) (DCP.AA1.2.00001, p. 186),

> Since its inception, the SWP has been required by law to collect revenue sufficient to reimburse DWR for all costs incurred in the construction, maintenance, and operation of the SWP (Wat. Code, § 11455: "The department shall enter into such contracts and fix and establish … charges so as at all times to provide revenue which will afford sufficient funds to pay all costs of operation and maintenance of the [SWP], together with necessary repairs and replacements thereto"; see also California Wat. Code § 12937; *Goodman v. County of Riverside* (1983), 140 Cal.App.3d 900, 910–911). Such costs include the cost of mitigation associated with those SWP activities.

Furthermore, the DCP MMRP incorporates the required adaptive management and, consistent with CEQA, DWR adopted the MMRP as an enforceable condition of approval of the DCP (DCP.B.1.00001, p. 2; DCP.C.1.00002, p. 1-2). (See also Pub. Resources Code, §

21081.6(b) [directing public agencies to make an MMRP "fully enforceable through permit conditions"].) **[A9-7, A9-WS-7]**

3.8 ER P2 (Restore Habitats at Appropriate Elevations)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with ER P2 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.8.1 A5—San Francisco Baykeeper et al. (Policy ER P2)

Issue. Appellant alleges that DWR relies on habitat mitigation for the DCP and therefore habitat conditions will not improve in the Delta. Appellant also alleges that the DCP will cause harm to native fish and the Delta ecosystem and that the DCP will benefit nonnative invasive species. Based on these claims, appellant thereby concludes that the DCP is inconsistent with ER P2. **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

Response: DWR Will Restore Habitat at Appropriate Elevations. Appellant mischaracterizes the policy requirements under ER P2. This Delta Plan policy is related to ensuring that habitat restoration actions are carried out at appropriate elevations. Appellant alleges that the DCP will harm native fish and instead benefit nonnative invasive species is not relevant to ER P2 consistency. (See Sec. 3.6, *ER P5 (Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species)*, for the summary of substantial evidence for how the DCP is consistent with ER P5 as it relates to nonnative invasive species.) Although the DCP is not an ecosystem restoration project, it involves habitat creation as part of its CMP. Appellant's claims fail to confront any of the substantial evidence in the Certification that the implementation of the CMP for the DCP will restore habitat at appropriate elevations as required under ER P2 (DCP.AA1.2.00001, pp. 121–136; DCP.AA1.2.00015). For example, the Tidal Habitat Mitigation Framework described in FEIR App. 3F, *Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources*, Sec. 3F.4.3, *Tidal Habitat Mitigation Framework*, focuses first on the suitable restoration areas identified in Delta Plan Ch. 4, *Protect, Restore, and Enhance the Delta Ecosystem*, such as the Cache Slough Complex and lower Yolo Bypass (DCP.D1.1.00017, p. 3F-63). These are regions of the Delta that currently include large areas of either terrestrial habitat or nontidal aquatic habitat within the intertidal elevation band or the sea level rise accommodation band as identified in Delta Plan App. Q1, *Methods Used to Update Ecosystem Restoration Maps Using New Digital Elevation Model and Tidal Data* (DCP.AA2.1.00066), and that could potentially be restored to tidal wetlands with actions such as levee breaching to establish hydrologic conditions (DCP.D1.1.00017, p. 3F-63). **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

3.9 ER P3 (Protect Opportunities to Restore Habitat)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with ER P3 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.9.1 A5—San Francisco Baykeeper et al. (Policy ER P3)

Issue. Appellant alleges that the DCP will not improve habitat conditions in the Delta because it relies on mitigation and that because the DCP does not improve habitat conditions, the DCP is inconsistent with ER P3. Appellant also alleges that the DCP will cause harm to native fish and the Delta ecosystem and that the DCP will benefit nonnative invasive species. Based on these claims, appellant thereby concludes that the DCP is inconsistent with ER P3. **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

Response: DWR Will Protect Opportunity to Restore Habitat. Appellant mischaracterizes the policy requirements under ER P3. This policy is related to avoiding adverse impacts on the opportunity to restore habitat in priority habitat restoration areas (PHRAs) identified in the Delta Plan. Appellant's claim that the DCP will harm native fish and instead benefit nonnative of invasive species is not relevant to ER P3 consistency (see Sec. 3.6, *ER P5 (Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species)*, for the summary of substantial evidence for how the DCP is consistent with ER P5 as it relates to nonnative invasive species). Appellant identifies no potential conflicts between the DCP and a PHRA. Thus, because appellant fails to discuss the evidence in the record that shows the DCP does not create significant adverse impacts on opportunities to restore habitat as described in California Code of Regulations, title 23, section 5006 and prove that none of that evidence is substantial, appellant fails to meet their burden of proof.

Substantial evidence supports DWR's finding of consistency of the DCP with ER P3. For example, while the DCP includes project elements within two PHRAs, including a maintenance shaft and road improvements, this infrastructure was carefully sited to avoid significant adverse impacts on future habitat restoration opportunities (DCP.AA1.2.00001, p. 141). This finding was based on the following factors: (1) the footprint of these activities is small (0.18% of the Cosumnes-Mokelumne River confluence PHRA and 0.017% of the Lower San Joaquin River floodplain between Stockton and Manteca PHRA), (2) the shaft was located at the edge of the PHRA and will not interfere with any known existing or proposed restoration plans, and (3) the road improvements within the PHRA will facilitate maintenance and could be beneficial for access for future restoration projects (DCP.AA1.2.00001, p. 141). **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

3.10 ER P4 (Expand Floodplains and Riparian Habitats in Levee Projects)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with ER P4 and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.10.1 A5—San Francisco Baykeeper et al. (Policy ER P4)

Issue. Appellant alleges that the DCP will not improve habitat conditions in the Delta because it relies on mitigation and that because the DCP does not improve habitat conditions, the covered action is inconsistent with ER P4. Appellant also alleges that the DCP will cause harm to native fish and the Delta ecosystem and that the DCP will benefit nonnative invasive species. Based on these claims, appellant thereby concludes that the DCP is inconsistent with ER P4. **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

Response: DWR Evaluated Alternatives to Increase Floodplains and Riparian Habitat. Appellant fails to identify any conflicts between the DCP and the policy requirements under ER P4. This policy calls for certifying agencies of a covered action involving construction of new levees or substantial rehabilitation or reconstruction of existing levees to consider and, where feasible, incorporate alternatives to increase floodplains and riparian habitats; and for certain areas of the Delta, the policy also requires evaluation of setback levees. Appellant's claim that the DCP will harm native fish and instead benefit nonnative of invasive species is not relevant to DP P4 consistency. (See Sec. 3.6, *ER P5 (Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species)*, for the summary of substantial evidence for how the DCP is consistent with ER P5 as it relates to nonnative invasive species.) Appellant identifies no ER P4 inconsistency, such as a failure by DWR to evaluate feasible alternatives to increase floodplains and riparian habitats under the DCP.

The administrative record provides substantial evidence regarding the consistency of the DCP with ER P4 that appellant fails to discuss or prove is not substantial. For example, DWR determined that there were no feasible levee alternatives that would increase floodplains because of constraints in intake siting (e.g., the intakes require constant contact with water to function and cannot feasibly be located in a setback levee that creates floodplain or riparian habitat) (DCP.AA1.2.00001, p. 145). Additionally, while DWR determined there was no feasible levee alternative that would increase riparian habitat, the DCP includes a mitigation measure that aligns with the intent of ER P4 to improve habitat complexity that support native species (DCP.AA1.2.00001, p. 145). As adopted in the legally enforceable MMRP, MM BIO-53: *Avoid and Minimize Impacts on Terrestrial Wildlife Connectivity and Movement* includes the commitment to provide continuous habitat

connectivity along riparian and riparian corridors (DCP.C.1.00002, p. 3-84). **[A5-25, A5-26, A5-27, A5-WS-28, A5-WS-30]**

3.11 Issues Raised on Recommendations or Policies Not Applicable to the DCP

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with each applicable policy and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. In addition, DWR conducted a robust coequal goals analysis, as described in Sec. 3.12, *G P1 (b)(1) (Coequal Goals)*.

3.11.1 A3—County of Sacramento and SCWA (DP R9)

3.11.1.1 Consistency Not Required for Delta Plan Recommendations

Issue. Appellant alleges that the DCP is inconsistent with DP R9 and that, as a result of that inconsistency, it would have a significant adverse impact on the coequal goals. Appellant cites the alleged DP P2 conflicts with agritourism as support for the allegation regarding DP R9. **[A3-71]**

Response: Consistency with Delta Plan Recommendations Not Required. DP R9 is a Delta Plan recommendation, not a policy. The DSC has made it clear that covered action certifications of consistency are not required to demonstrate consistency with Delta Plan recommendations. By regulation, the Certification need only show consistency with applicable Delta Plan policies (Cal. Code Regs., tit. 23, § 5002(b)(1): "Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies contained in Article 3 [Cal. Code Regs., tit. 23, §§ 5003-5015] implicated by the covered action"). Additionally, appellant cites to anecdotal statements but fails to demonstrate that the Certification analysis for DP P2 (DCP.AA1.2.00001, pp. 164–166; DCP.AA1.2.00018; DCP.AA1.2.00019), including consideration of agritourism, is not supported by substantial evidence in the record. **[A3-71]**

3.11.2 A1—Delta Protection Commission (Policy DP R9)

3.11.2.1 Consistency Not Required for Delta Plan Recommendations

Issue. Appellant alleges DWR ignored Delta Plan recommendations. **[A1-WS-7]**

Response: Consistency with Delta Plan Recommendations Not Required. See Sec. 3.11.1.1, *Consistency Not Required for Delta Plan Recommendations*, for a discussion of why the Delta Plan does not require consistency with recommendations. **[A1-WS-7]**

3.11.3 A2—Courtland Pear Fair (Policy DP P1)

3.11.3.1 DP P1 Is Not Applicable

Issue. Appellant alleges that DP P1 is applicable because, regardless of "government-use," the DCP comprises large-scale, permanent, "industrial-type" facilities in and adjacent to the unincorporated Delta towns. **[A2-3, A2-4, A2-5, A2-7, A2-WS-5]**

Response: DCP Does Not Involve Residential, Commercial, or Industrial Development. As described in the Certification (DCP.AA1.2.00001, p. 30), DP P1 is not applicable to the DCP because the covered action is a State government use and does not involve residential, commercial, or industrial development. The DCP structures and facilities will be a government use, located and constructed on land that will be owned by the State of California. To achieve the governmental purposes for which it is designed, the permanent water conveyance facilities must be located at specific locations within the Delta, and the temporary construction-related structures must be located along and adjacent to the conveyance facilities. In the case of the DCP, these structures are considered governmental public use and not new permanent residential, commercial, or industrial development (DCP.D4.3.00001). Ch. 5, *Protect and Enhance the Unique Cultural, Recreational, Natural Resource, and Agricultural Values of the California Delta as an Evolving Place*, of the Delta Plan (DCP.AA2.1.00015, p. 194) recognizes that public/quasi-public uses are a land use that is distinguishable from residential, commercial, or industrial development. As the DSC also stated in its comment letter on the DEIR, "The project does not propose residential, commercial or industrial development as part of the identified alternatives" (response to comment 507-25 in FEIR Vol. 2, Ch. 4, *Response to Comment Tables* (DCP.D1.1.00241, p. 112)). **[A2-3, A2-4, A2-5, A2-7, A2-WS-5]**

3.11.3.2 Land Use Analysis Is Not Required for DP P1

Issue. Appellant alleges that the Certification fails to analyze whether the DCP facilities are consistent with agricultural and open space land use designations and small-town character. Appellant also alleges that the DCP threatens the Delta economy and core cultural institutions, specifically the Courtland Pear Fair, which appellant alleges in turn affects the coequal goal of protecting and enhancing the Delta as an evolving place. **[A2-6, A2-8, A2-9, A2-10, A2-WS-5, A2-WS-11]**

Response: Siting Considerations and Efforts to Minimize Effects on Hood and Courtland. DP P1 does not apply, and even if it did, it does not require the type of land use analysis that appellant alleges is missing. Substantial evidence in the record shows that DWR has conducted extensive siting analysis and designed the DCP to avoid or minimize impacts on the agricultural and open space uses of the Delta Primary Zone when feasible, paying particular attention to the towns of Hood and Courtland. TMs in the CER present facility siting analyses for intake locations, conveyance facility alignments, and storage and pumping

facilities. In general, these analyses incorporated land use constraints, facility engineering requirements, construction feasibility and logistics, and potential environmental impacts, as described in CER App. B6*, Intake Site Identification and Evaluation* (DCP.D4.3.00009). CER App. I2, *Efforts to Minimize Delta Community Effects* (DCP.D4.3.00045), summarizes the approach and highlights the results of the activities conducted by DCA to minimize local community effects, including effects on the towns of Hood and Courtland. **[A2-6, A2-8, A2-10]**

Response: Other Issues Raised Under DP P1 but Not Relevant to Policy or Outside DSC Appeals Jurisdiction. Appellant alleges the DCP threatens core cultural institutions, specifically the Courtland Pear Fair, which appellant alleges in turn affects the coequal goal of protecting and enhancing the Delta as an evolving place. See Sec. 3.1.8.2, *Delta Community Events*. **[A2-8, A2-9, A2-10, A2-WS-5, A2-WS-11]**

3.11.4 A4—Steamboat Resort (DP R1 and DP P1)

3.11.4.1 Consistency Not Required for Delta Plan Recommendations

Issue. Appellant alleges the Certification does not evaluate or disclose recreation impacts on Steamboat Resort and is therefore not consistent with DP R1. **[A4-4, A4-5]**

Response: Consistency with Delta Plan Recommendations Not Required. See Sec. 3.11.1.1, *Consistency Not Required for Delta Plan Recommendations*, for a discussion of why the Delta Plan does not require consistency with recommendations. **[A4-4, A4-5]**

3.11.4.2 DP P1 Is Not Applicable

Issue. Appellant alleges that the aesthetics and visual resources analysis presented in the FEIR and the duration of construction mean the DCP is inconsistent with DP P1. Appellant alleges that the DCP comprises industrial facilities in and adjacent to the unincorporated Delta towns. **[A4-WS-6]**

Response: DP P1 Is Not Applicable to DCP. This issue was raised by appellant for the first time in appellant's written submission and is therefore waived. (See Sec. 1, *Introduction*, for discussion of written submission requirements.) Moreover, as described in the Certification (DCP.AA1.2.00001, p. 30), DP P1 is not applicable to the DCP because the covered action is a State government use and does not involve residential, commercial, or industrial development; the visual characterization in FEIR Ch. 18, *Aesthetics and Visual Resources*, is not relevant to DP P1 because the policy solely regulates land use.

See Sec. 3.11.3.1, *DP P1 Is Not Applicable*, under *DCP Does Not Involve Residential, Commercial, or Industrial Development*. See also Sec. 3.1.9.1, *Marina Businesses*, under *Modeling Supports Finding DCP Will Not Conflict with Recreational Use*. **[A4-WS-6]**

3.11.5 A10—DCC Engineering (RR P1 and RR P3)

3.11.5.1 RR P1 and RR P3 Not Applicable

Issue. Appellant alleges that because of the dependence of the DCP on the Delta levee system, RR P1 would apply and would require additional analysis to demonstrate consistency with the policy. Appellant also alleges DWR's Certification is inconsistent with RR P3 because if a broader definition of "designated floodway" was considered, then RR P3 would apply and require additional analysis to demonstrate consistency with the policy. **[A10-4, A10-5, A10-6, A10-WS-2, A10-WS-3, A10-WS-6, A10-WS-7, A10-WS-8, A10-WS-9, A10-WS-10, A10-WS-11, A10-WS-12, A10-WS-13, A10-WS-14, A10-WS-15, A10-WS-16, A10-WS-17, A10-WS-18]**

Response: Issues Raised Not Relevant to RR P1 and RR P3. Applicability of a policy is not based on associations with the general topic areas that the policies discuss but rather is determined by the policy text and regulatory definitions of terms in the policies. Appellant's allegation fails to raise an appealable issue based on the policy text. As detailed in the Certification (DCP.AA1.2.00001, pp. 32–34, 36–38), RR P1 and RR P3 do not apply to the DCP. The term "designated floodway" as used in RR P3 to determine whether it applies is defined in California Code of Regulations, tit. 23, section 5001(s), so the broader definition appellant relies on is irrelevant to determining whether the policy applies. Additionally, issues irrelevant to a policy are not appealable. Use of construction materials is not relevant to RR P1, which focuses on discretionary State investments in Delta flood risk management (see also Sec. 3.1.10.1, *Raw Construction Materials for Reclamation Districts*). A discussion of regulated streams and floodways is not relevant to RR P3, which focuses on unregulated streams and floodways. Contrary to appellant's argument, use of construction materials is not an issue considered by the Delta Plan. This issue is, however, fully addressed in FEIR Ch. 27, *Mineral Resources* (DCP.D1.1.00198). Flood-related issues are fully addressed in FEIR Ch. 7, *Flood Protection* (DCP.D1.1.00057). **[A10-4, A10-5, A10-6, A10-WS-2, A10-WS-3, A10-WS-6, A10-WS-7, A10-WS-8, A10-WS-9, A10-WS-10, A10-WS-11, A10-WS-12, A10-WS-13, A10-WS-14, A10-WS-15, A10-WS-16, A10-WS-17, A10-WS-18]**

3.12 G P1 (b)(1) (Coequal Goals)

For the reasons discussed in this section, appellants fail to carry their burden of proving that DWR's Certification is not supported by substantial evidence. The DCP is consistent with each applicable policy and as such does not conflict with achievement of the coequal goals as a result of the alleged inconsistency. Additionally, appellants fail to confront the substantial evidence in DWR's Certification (DCP.AA1.2.00001, pp. 189–199).

3.12.1 A3—County of Sacramento and SCWA (Policy G P1 (b)(1))

3.12.1.1 Consistency on Whole with the Coequal Goals

Issue. Appellant alleges that the DCP on whole is not consistent with the Delta Plan's coequal goals because it (1) does not ensure a more reliable water supply for the state and makes Delta water supply less reliable, (2) will substantially damage and degrade the Delta ecosystem, and (3) fails to protect and enhance the Delta as an evolving place. **[A3-4, A3-15, A3-16, A3-17, A3-18, AS-WS-6, AS-WS-75]**

Response: DCP Will Support Water Supply Reliability. The first coequal goal *for the Delta* is "providing a more reliable water supply for California" (Pub. Resources Code, § 29702(a)). The Delta Reform Act was enacted to address a crisis in the Delta, the "hub of the California water system" that was eroding the reliability of water supplies diverted from the Delta by the SWP and Central Valley Project, which supply water to two-thirds of the state's population and 2 million acres of farmland, as environmental regulations to protect the Delta ecosystem restricted diversions. (Wat. Code, §§ 85001(a), (c), 85002, 85004.) As described in the Certification (DCP.AA1.2.00001, pp. 189–199), substantial evidence in the administrative record supports DWR's consistency with the coequal goal for the Delta of water supply reliability because it shows that the DCP will dramatically improve long-term average SWP supplies as climate change and sea level rise would otherwise erode it. As stated in the *Department of Water Resources Climate Action Plan, Phase III: State Water Project Adaptation Strategy* (SWP Adaptation Strategy) (DCP.AA2.1.00104), the DCP, among evaluated strategies, is the single most effective strategy on its own, but it also amplifies the water supply reliability benefit of other strategies to address the otherwise significant erosion in reliability of SWP supplies due to climate change and sea level rise. The substantial evidence in the record—including the SWP Adaptation Strategy and the modeling tools used—is discussed further in Sec. 3.2.1.1, *Documented Use of Best Available Science and Approach to Analysis*, under *DWR's Overall Approach to Using Best Available Science*; Sec. 3.2.1.4, *Use of CalSim in Assessing Impacts on Aquatic Species*, under *Approach to Using CalSim 3 Output in Assessing Impacts on Aquatic Resources*; Sec. 3.2.1.6, *Consistency with the Six Best Available Science Criteria*, under *DWR's Overall Approach to Consistency with Best Available Science Criteria*; and Sec. 3.2.1.7, *Use and Development of New Information*, under *DWR's Overall Approach to Incorporating New Information* and *Climate Change Modeling*. Sec. 3.2.1.8, *Differing Opinions Among Experts*, explains why differing opinions by experts does not meet appellant's burden of proof under the substantial evidence standard. Additionally, because the DCP will result in a SWP with dual conveyance in the Delta (i.e., able to divert water from either the north Delta or south Delta), so-called "through-Delta conveyance" that relies, in part, on some of the existing levees will continue to be an important feature in the Delta under the operation of the SWP as modified to include the DCP. **[A3-4, A3-15, A3-16, AS-WS-6]**

Response: DCP Will Not Conflict with Achievement of Delta Ecosystem Goal. As described in the Certification (DCP.AA1.2.00001, pp. 193–194), the DCP does not conflict with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. "Achieving the coequal goal of protecting, restoring, and enhancing the Delta ecosystem" means successfully establishing a resilient, functioning estuary and surrounding terrestrial landscape capable of supporting viable populations of native resident and migratory species with diverse and biologically appropriate habitats, functional corridors, and ecosystem processes. (Cal. Code Regs., tit. 23, § 5001(l)(2).) As demonstrated in the FEIR, in consideration of DWR's commitment to implement the mitigation measures as well as CMP and ECs included in DCP's MMRP, the DCP is protective of the Delta ecosystem (see FEIR Appendix 3E, *Delta Reform Act Considerations*, and Vol. 2, Ch. 3, Common Response 8, *Relationship to Other Plans, Projects, Policies, and Programs* (DCP.D1.1.00015; DCP.D1.1.00229, pp. 8-3–8-4)). As demonstrated in the Certification and in this WS, DWR has also shown consistency with policies intended to protect Delta flows, protect against and manage introductions of nonnative invasive species, and protect opportunities to restore habitat and the restoration of habitat at appropriate elevations (see Sec. 3.4, *ER P1 (Delta Flow Objectives)*; Sec. 3.6, *ER P5 (Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species)*; Sec. 3.8, *ER P2 (Restore Habitats at Appropriate Elevations)*; and Sec. 3.9, *ER P3 (Protect Opportunities to Restore Habitat)*). Therefore, DWR has shown consistency with the second coequal goal because it will not conflict with or thwart ecosystem restoration and enhancement in the Delta. Appellant alleges that the BDCP was required to meet both coequal goals when included in the Delta Reform Act and implies that this also applies to the DCP. DWR acknowledged that BDCP had different objectives and that, because of those objectives, the Delta Reform Act included a separate pathway for direct incorporation into the Delta Plan rather than a certification of consistency process (Wat. Code, § 85320). Rather than seek direct incorporation to the Delta Plan, DWR is following the standard consistency process for the DCP. Similarly to how a residential subdivision project can be consistent with a county general plan without achieving every objective in the general plan, under section 5002(b)(1), a covered action can be found consistent with the coequal goals without the covered action, by itself, achieving both coequal goals (Cal. Code Regs., tit. 23, § 5002(b)(1)). To demonstrate consistency with the coequal goals under section 5002(b)(1), a certifying agency must only demonstrate, based on substantial evidence, that the covered action will not conflict with or thwart one or both of the coequal goals (DCP.AA1.2.00001, pp. 193–194). Additionally, FEIR Ch. 13, in Impact BIO-54: *Conflict with the Provisions of an Adopted Habitat Conservation Plan, Natural Community Conservation Plan, or Other Approved Local, Regional, or State Habitat Conservation Plan* (DCP.D1.1.00112, pp. 13-446–13-457), analyzed an analysis of HCPs, NCCPs, and other regional conservation plans in or near the study area and concluded that in consideration of the ECs and mitigation measures in the FEIR, the impact will be less than significant. These analyses and proposed mitigation measures meet the requirements of CEQA. Regarding appellant's claims about perceived Harvest Water conflicts and

achievement of the Delta ecosystem coequal goal, details regarding alleged conflicts with the program can be found in Sec. 3.1.2.1, *Harvest Water Program*, which demonstrates that the DCP is consistent with DP P2 and therefore supports consistency with the coequal goals. Additionally, DWR will coordinate with SacSewer through other regulatory processes (response to comment 539-33 in FEIR Vol. 2, Ch. 4, *Response to Comment Tables*, Table 4-3 (DCP.D1.1.00247)). These analyses and proposed mitigation measures constitute substantial evidence supporting DWR's conclusion that the DCP will not conflict with achievement of the Delta ecosystem coequal goal. **[A3-4, A3-15, A3-17, AS-WS-6, AS-WS-75]**

Response: Coequal Goals Can Be Achieved in a Manner That Protects and Enhances the Delta as an Evolving Place. As described in the Certification (DCP.AA1.2.00001, p. 194–199), the Delta Plan's definition of what it means to achieve the coequal goals in a manner that protects the Delta as an evolving place recognizes that change is inevitable and needed. DWR has gone to great lengths to develop a project that helps achieve the coequal goals while also providing a portfolio of design considerations, mitigation, and programs that assist in the overall effort of protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. As part of said portfolio, the CBP will ultimately identify and implement commitments to help protect and enhance the cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place (DCP.D1.1.00010, p. 3-162). The DCP CBP—with a dedicated $200 million fund—will seek to deliver tangible, lasting and measurable benefits to communities nearest to, and most affected by, project construction activities (DCP.D6.3.00074). This will include community grants (Delta Community Fund), economic development, integrated benefits, and agreements for community-specific projects. The CBP could be used to support actions to enhance the local Delta economy and tourism and build on the regional vision to support the unique cultural, recreational, natural resource and agricultural values of the Delta articulated by the NHA.

Appellant cites the establishment of the NHA and adoption of its management plan, the development of SacSewer's Harvest Water Program, and the adoption of a groundwater sustainability plan for the South American Subbasin as reasons why the DCP would not protect and enhance the Delta as an evolving place, but appellant fails to explain how the evidence in DWR's record regarding consistency with Delta Plan regulatory policies is not substantial. Appellant's failure to discuss the evidence in the record and show that DWR's evidence is not substantial is fatal, as discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. Appellant is deemed to have forfeited the substantial evidence argument regarding consistency on whole with the coequal goals. **[A3-4, A3-15, A3-18, AS-WS-6]**

3.12.1.2 The Coequal Goals Consistency Analysis Does Not Require Analysis of Alternatives to the DCP

Issue. Appellant alleges that alternative approaches to conveyance need to be considered in an analysis of consistency with the coequal goals. **[A3-19]**

Response: Alternatives to Conveyance Not Required. G P1 (Cal. Code Regs., tit. 23, § 5002(b)(1)) states, "Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies contained in Article 3 implicated by the covered action." In addition, if full consistency with one or more applicable policies is infeasible, "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" (*ibid*.). Thus, an analysis for consistency with the Delta Plan is limited to the DCP. As explained by the court in *Tulare Lake, supra,* 115 CalApp.5th at p. 361, "the certification of consistency does not serve as an informational document for use by the decision maker in selecting among project alternatives. Instead, it certifies that the covered action is consistent with the Delta Plan." While some policies may require consideration of modifications of the covered action, a consistency analysis does not require consideration of "alternative approaches to conveyance" (i.e., the covered action) as appellant alleges in their appeal. The Certification (DCP.AA1.2.00001, pp. 189–199), based on substantial evidence, demonstrates that the DCP is, on a whole, consistent with the coequal goals. **[A3-19]**

3.12.2 A6—Sacramento Area Sewer District (Policy G P1 (b)(1))

See the following sections for responses to comments in A6 that are similar to those in A3: Sec. 3.12.1.1, *Consistency on Whole with the Coequal Goals*, and Sec. 3.12.1.2, *The Coequal Goals Consistency Analysis Does Not Require Analysis of Alternatives to the DCP.* **[A6-4, A6-17, A6-18, A6-19, A6-20, A6-21, A6-22, A6-48, A6-76]**

3.12.3 A7—City of Stockton (Policy G P1 (b)(1))

See the following sections for responses to comments in A7 that are similar to those in A3: Sec. 3.12.1.1, *Consistency on Whole with the Coequal Goals*, and Sec. 3.12.1.2, *The Coequal Goals Consistency Analysis Does Not Require Analysis of Alternatives to the DCP.* **[A7-4, A7-16, A7-17, A7-18, A7-19, A7-20, A7-63]**

3.12.4 A1—Delta Protection Commission (Policy G P1 (b)(1))

3.12.4.1 Issues Raised Regarding Consistency with the Coequal Goals

Issue. Appellant asserts that the DCP jeopardizes long-term sustainability of small Delta communities. **[A1-25, A1-44, A1-52, A1-WS-7]**

Response: Consideration of Potential Impacts on Delta Communities in DCP Analysis and Planning. Appellant does not explain why the DCP cannot be achieved "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." Appellant fails to (1) cite and discuss all the evidence relied on by DWR and (2) show that DWR's evidence is not substantial. This failure is fatal, as discussed in Sec. 2.2, *Substantial Evidence Standard, Appellant's Burden, and Adequacy of the Record*. Appellant's unsupported allegation of secondary economic impacts (declining property values, blight, and abandonment) is baseless. Although the DCP would result in new features in the landscape, they represent a small acreage of the total landscape (impacting less than 0.5% of the total farmland in the Delta (DCP.D6.3.00011)), are water conveyance related features that are similar to existing features in the landscape, and, as discussed in the Delta Plan, "Protecting the Delta as an evolving place means accepting that change will not stop, but that the fundamental characteristics and values that contribute to the Delta's special qualities and that distinguishes it from other places can be preserved and enhanced while accommodating these changes" (DCP.AA2.1.00015, p. 167). As discussed in the Certification under *G P1 (b)(1) Coequal Goals* (DCP.AA1.2.00001, pp. 194–199), DWR has gone to great lengths to develop a project that helps achieve the coequal goals while also providing a portfolio of design considerations, mitigation, and programs (including the CBP) that assist in the overall effort of protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. **[A1-25, A1-44, A1-52, A1-WS-7]**

Issue. Appellant alleges that DWR failed to adequately consider other possible options that could ensure water supply reliability and ecosystem health while also respecting the Delta as an evolving place, and the alternatives it did consider were conceptually similar. **[A1-41, A1-42, A1-58]**

Response: Delta Plan Recommends Dual Conveyance. A consistency analysis does not require consideration of alternative projects. See Sec. 3.12.1.2, *The Coequal Goals Consistency Analysis Does Not Require Alternatives to the DCP*, for more detail. Nevertheless, appellant suggests that DWR should abandon the use of a conveyance tunnel and adopt a so-called "through-Delta" conveyance approach and Delta levee investment to improve the existing conveyance. The screening analysis in FEIR App. 3A, *Identification of Water Conveyance Alternatives* (DCP.D1.1.00011), revealed that this approach would not address the resiliency and water supply reliability screening criteria because of reliance on the existing SWP facilities and lack of resiliency for sea level rise, climate change, and seismic risk. Additional discussion on the EIR screening process for the DCP can be found in Common Response 3, *Alternatives Development and Description*, in FEIR Vol. 2, Ch. 3, *Common Responses* (DCP.D1.1.00224).

Although appellant suggests otherwise, as amended, the Delta Plan recommends DWR "pursue a dual-conveyance option for the Delta" (Delta Plan Recommendation WR R12a(1)).

(See also Delta Plan Ch. 3, *A More Reliable Water Supply for California* (DCP.D3.1.00478, p. 103): "new conveyance in the Delta should … be a combination of new isolated conveyance and improved through-Delta conveyance facilities (dual conveyance) with access to multiple points of diversion, including one or more screened diversions.") Such a system will provide the capacity and operational flexibility that are needed to create more natural, variable flows and improve temperature conditions to support ecosystem health, maintain water quality for in-Delta uses, and move more water during wetter periods when supplies are available for both environmental and consumptive uses. See Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *G P1 (b)(1)* (DCP.AA1.2.00001) for more information on DWR's approach to the coequal goals and Certification Att. A (DCP.AA1.2.00004), on how DWR has followed the Delta Plan's recommendations to promote, evaluate, design, and implement new and improved facilities for water conveyance and water diversion in the Delta.

Because the DCP allows dual conveyance (i.e., able to divert water from either the north or south Delta), certain existing levees will continue to be important to the reliability of SWP exports under DCP operations. The federal government (e.g., USACE) also has existing programs and funding associated with the levees in the Delta, and, as with state and DWR programs, these would continue regardless of whether DWR implements the DCP. As noted in FEIR Vol. 2, Ch. 3, Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review Issues* (DCP.D1.1.00222), the project does not change the state's flood protection policies or programs, including continued public funding for public and private levee maintenance and enhancements in the Delta. **[A1-41, A1-42, A1-58]**

Issue. Appellant alleges that DWR overestimated the seismic hazard and the importance of the DCP after a seismic event. **[A1-43, A1-59]**

Response: Seismic Risk and Project Objective. Appellant's argument concerning a Maven's Notebook article should be rejected because the article is not in the Certification record, appellant did not seek official notice of the article, and, even if a request had been made, the request would have lacked merit as discussed in Table 5-2 in Sec. 5, *Objections*. Furthermore, by cutting short a quotation from the article, appellant misrepresents the statement in the Maven's Notebook regarding through-Delta conveyance. Contrary to appellant's allegation that the DCP would not be important following a seismic event because "80% of exported water would still be conveyed by through-Delta channels after tunnel construction," the full quote is consistent with DWR's objective to provide operational flexibility:

> "The way we get our water now is through Delta conveyance, and so this would still continue," said Dr. Martin. "Even with the Delta conveyance project, about 80% of the water is currently planned to go through the Delta *on a long-term average. At certain times, the percentage would be different and much more.*"

> In the event of an earthquake, salinity could intrude and affect the ability for water to be exported from the Delta, but Dr. Martin noted that other events could cause an outage in the Delta, such as a chemical spill or a levee breach. The Delta Conveyance Project, with its intakes in the North Delta, would be able to export water in the event of a Delta outage condition, either due to seismic activity or a chemical spill in the Delta.[3] [emphasis added]

In regard to the assertion that the seismic hazard is overstated, see Sec. 3.2.1.8, *Differing Opinions Among Experts*, under *Seismic Hazards* response. **[A1-43, A1-59]**

Issue. Appellant alleges that the DCP on whole is inconsistent with the Delta Plan's coequal goals because it (1) has not considered best available science for identifying and analyzing impacts on Delta recreation and (2) achieves water supply reliability at the expense of Delta recreation and the economic foundation it brings to communities and residents. **[A1-79]**

Response: Effects on Recreation Not Substantial or Inconsistent with Coequal Goals. Regarding appellant's best available science allegation, see Sec. 3.2.4.1 under *DWR's Overall Approach to Using Best Available Science* for a discussion of the thorough documentation of DWR's use of best available science in G P1 (b)(3) Att. 1 (DCP.AA1.2.00021). Appellant fails to demonstrate that the DCP is inconsistent with G P1 (b)(3) and, because of an inconsistency, will have a significant impact on the achievement of one or both of the coequal goals.

Regarding appellant's coequal goals allegation, California Public Resources Code section 29702(a) states, "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. With respect to the Delta Plan's definition of "Delta as an evolving place," Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *G P1 (b)(1)* (DCP.AA1.2.00001, p. 195) makes clear that "None of the various strategies identified in the definition are directly assigned to DWR or this covered action; however, the covered action does not conflict with the achievement of the strategies." Addressing core strategy "(D) Encourage recreation and tourism that allow visitors to enjoy and appreciate the Delta and that contribute to its economy," the Certification finds, based on substantial evidence in the record, that "the effects of project construction on recreation activities will

[3] As explained above, appellant did not seek official notice of the article (Maven's Notebook. 2024. Notebook Feature: Metropolitan Committee Discusses Delta Conveyance Project Ahead of December Vote on Funding Planning Costs. Date posted: October 17, 2024. Available: https://mavensnotebook.com/2024/10/17/notebook-feature-metropolitan-committee-discusses-delta-conveyance-project-ahead-of-december-vote-on-funding-planning-costs. Accessed: December 30, 2025) and the DSC should not consider the article. However, in the event the DSC considers the article, DWR has quoted it to demonstrate that it does not support appellant's allegation.

not be substantial and will not lead to physical changes to the environment" (DCP.AA1.2.00001, p. 196). Furthermore, potential effects on recreational opportunities will be minimized by lessening in-water work activities, reducing construction- and operation-related traffic on public roads by constructing separate project access roads, and using a traffic management plan to minimize traffic impacts (DCP.AA1.2.00001). Therefore, substantial evidence in the record demonstrates that DWR has gone to great lengths to develop a project that is on the whole consistent with the coequal goals while also providing a portfolio of design considerations, mitigation, and programs that assist in the overall effort of protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. **[A1-79]**

3.12.5 A5—San Francisco Baykeeper et al. (Policy G P1 (b)(1))

See the following section for a response to a comment in A5 that is similar to that in A9: Sec. 3.1.7.5, *Tribal Cultural Resources*. **[A5-54]**

3.12.5.1 Consistency on Whole with the Coequal Goals

Issue. Appellant alleges that DWR failed to demonstrate based on substantial evidence that the DCP will further the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. **[A5-44, A5-45, A5-46, A5-47, A5-WS-5]**

Response: Consistency Does Not Require Furthering of Both Coequal Goals. G P1 (b)(1) does not require a covered action to further both coequal goals to show that the project is *on whole* consistent with the coequal goals. A project need not actively further both coequal goals to be consistent with both—otherwise, every restoration project proposed in the Delta would also need to include a water supply component (to further the coequal goal of achieving a more reliable water supply), which is not practical or required by the Delta Plan regulation. As discussed in Sec. 5.2, *Delta Plan Policies Applicable to the Covered Action*, of the Certification under *G P1 (b)(1)* (DCP.AA1.2.00001, pp. 189–199), the DCP is not an ecosystem protection, restoration, or enhancement project, but it includes objectives related to the Delta ecosystem and is protective of the Delta ecosystem. Additionally see Sec. 3.12.1.1, *Consistency on Whole with the Coequal Goals*, for a discussion on the ecosystem goal. Nothing in GP 1 (b)(1) requires covered actions to have zero effects on the ecosystem to demonstrate consistency with the second, ecosystem, coequal goal. If that were a requirement, it would have the absurd result that no covered action in the Delta other than an ecosystem restoration or enhancement project could be consistent with the second coequal goal. **[A5-44, A5-45, A5-46, A5-47, A5-WS-5]**

Issue. Appellant alleges that DWR failed to demonstrate based on substantial evidence that the DCP will be built or operated in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. **[A5-48, A5-49, A5-50, A5-51, A5-52, A5-53, A5-WS-5]**

Response: Significant Impacts. DWR disagrees with appellant's many allegations that do not cite to the record or connect to what DWR included in the coequal goals discussion in the Certification. Substantial evidence in the record supports the Certification's discussion of economic and agriculture impacts in Sec. 5.2 under *G P1 (b)(1) Coequal Goals* (DCP.AA1.2.00001). Significant and unavoidable impacts are also discussed in Sec. 5.2 of the Certification, under *G P1 (b)(1) Coequal Goals*, and the Delta Conveyance Project Findings of Fact and Statement of Overriding Considerations identifies significant and unavoidable impacts for agricultural resources, aesthetics and visual resources, cultural resources, transportation, air quality, noise, paleontological resources, and tribal cultural resources (DCP.C.1.00001, pp. 1–8 of Exhibit A). This is primarily due to maintaining a conservative approach in the face of uncertainty and the lack of authority to require private parties to participate in mitigation programs. Nothing in GP 1 (b)(1) requires a project not to have significant and unavoidable impacts to show consistency with the coequal goals. DWR has provided mitigation measures and ECs that address all potential significant impacts to the extent feasible and are the same as, equal to, or more effective than the mitigation measures described in Delta Plan App. O, *Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program*. **[A5-48, A5-49, A5-WS-5]**

Response: Community Input. Appellant alleges that DWR ignores the interested parties. Outreach is not an appealable issue, and the allegation is inaccurate. Contrary to appellant's allegation that DWR ignores groups that are generally opposed to the project, DWR conducted extensive public outreach for the DCP including to counties, cities and community groups. Outreach efforts are discussed in Sec. 4.7, *Accountability Action Plan and Public Outreach*, of the Certification (DCP.AA1.2.00001, pp. 16–28). **[A5-49]**

Response: Temporary Impacts. Appellant alleges that DWR treats construction impacts as temporary, and that construction will have permanent consequences. Throughout the FEIR, impacts are identified as temporary or permanent. These terms apply differently to different resources. Where relevant and used as part of the analysis, they are defined in the respective resource chapter. Because of the nature of the impact, some impacts are treated as permanent, even though the impact mechanism would end following DCP construction. For example, impacts on terrestrial biological resources that would end following construction activities are nonetheless treated as permanent impacts for the purposes of impact analysis if the resource would be removed or lost and not replaced at its original site. In some cases, impacts were characterized as permanent where the ability to replace or successfully restore the resource following construction was uncertain or when the construction period would extend for multiple years. Characterizing such impacts as permanent in this manner is conservative. For other resources, however, such as noise, when construction ceases, so do impacts associated with construction. In such cases, impacts were characterized as temporary.

DWR provided an analysis of recreation and economic impacts in FEIR Ch. 16, *Recreation*, and Ch. 17, *Socioeconomics* (DCP.D1.1.00149; DCP.D1.1.00154) and neither analysis identified closures of recreational facilities or major reductions in business incomes. Regardless, the CBP could be used to support actions to enhance the local Delta economy and tourism. See also responses in Sec. 3.1.5, *A5—San Francisco Baykeeper et al. (Policy DP P2)*. **[A5-50]**

Response: DSC EIR Comments. Appellant alleges that DWR downplays loss of recreational opportunities and points to a comment from the DSC on the DEIR. DWR addressed the DSC's comment 507-22 in FEIR Vol. 2, Ch. 4 (DCP.D1.1.00241), stating,

> Impacts associated with loss of fishing access are identified in Chapter 29, *Environmental Justice* [DCP.D1.1.00200], specifically under Fish and Aquatic Resources, and in Chapter 17, *Socioeconomics* [DCP.D1.1.00154], specifically under ECON-5. These sections explain that although construction of one or more intakes on the Sacramento River would obstruct access to fishing spots along the east riverbank at intake locations, these shoreline areas are very small compared to the total riverine and nearshore areas found alongside the Sacramento River main channel and total shoreline areas found through the Delta and there is ample access to the river for bank fishing from numerous other locations on both sides of the Sacramento River in the study area and throughout the Delta. Further, as stated in Chapter 16, *Recreation* [DCP.D1.1.00149], under Impact REC-1, no documentation was found that indicated these areas receive much use, if any; these areas represent a very small amount of shoreline compared to the many miles of shoreline accessible by adjoining roads; anglers would still have abundant choices for accessing desired locations for shoreline fishing in and around the intake locations without these areas. [Administrative record codes added]
>
> **[A5-51]**

Response: Community Benefits Program Use. Appellant alleges that the CBP has existed for multiple years and that there are no public contracts yet available, no demonstration that the funds will be spent in ways that will benefit the community, and wholesale exclusion of areas in the Delta that will be negatively impacted by the DCP from participation in the CBP. The coequal goals do not require a CBP, and therefore details regarding the development process and funding are not an appealable issue. Additionally, there is nothing in the CBP that excludes any part of the Delta. The CBP is part of the approved project, which is substantial evidence that DWR will follow through with development of the CBP. DWR has been coordinating with several entities since 2022 on various CBAs that encompass specific community needs both large and small. CBAs cannot be executed until any environmental review required under CEQA for a project identified in a CBA is completed and DWR has issued revenue bonds to fund the DCP. However, agreements in principle are in development to summarize the key terms and conditions that will form the basis for the negotiation, execution, and performance of final CBAs. The draft agreements encompass various community-specific needs and priorities and are summarized in Table 4-1 of the Certification (DCP.AA1.2.00001, pp. 18–19). DWR has made numerous commitments to address effects

within the local community during construction of the DCP, with the overall goal being to avoid, minimize, or offset these effects for residents, businesses, recreators, subsistence fishers, Tribes, environmental justice communities, emergency responders, tourists, environmental NGOs, agricultural operations, and the traveling public, among many others. To describe, memorialize, track, and fulfill these commitments, DWR has established an Accountability Action Plan for the project (DCP.D6.5.00002). Core components of DWR's Accountability Action Plan include the Ombudsman Program (DCP.D6.5.00004); the MMRP explainer (DCP.D6.5.00005); the CBP (DCP.D6.4.00001), Community Advisory Groups, and Project Communications. Enforceable mitigation measures and ECs address potential impacts, including potentially significant impacts; an ombudsman will increase effective communication and aid with claims submittals; and a CBP will ultimately identify and implement commitments to help protect and enhance the cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Sec. 4.7 of the Certification (DCP.AA1.2.00001), under *Accountability Action Plan*, provides a detailed description of the Accountability Action Plan and CBP.

DWR has gone to great lengths to develop a project that helps achieve the coequal goal for the Delta of more reliable water supplies that is still consistent with the ecosystem restoration goal and State policy to achieve the coequal goals in a manner that protects the Delta as an evolving place by providing a portfolio of design considerations, mitigation, and programs like the CBP that assist in the overall effort of protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. **[A5-48, A5-49, A5-50, A5-51, A5-52, A5-53]**

3.12.6 A9—San Joaquin County et al. (Policy G P1 (b)(1))

3.12.6.1 Inconsistency with ER P5 Will Impair the Achievement of the Coequal Goals

Issue. Appellant alleges that the failure to address how the DCP may exacerbate spread of a noxious invasive species constitutes a direct threat to the ability protect, restore, and enhance the Delta ecosystem and protect the Delta as a place. **[A9-80]**

Response: DCP Consistent with ER P5. Appellant fails to demonstrate that there is a lack of substantial evidence in the record and fails to show that DWR's evidence is not substantial. The substantial evidence presented in the Certification (DCP.AA1.2.00001, pp. 147–163) and its attachments (DCP.AA1.2.00002–DCP.AA1.2.00026) and the FEIR (DCP.D1.1.00001–DCP.D1.1.00254) demonstrates that DWR has fully considered the potential for introductions of or improved habitat conditions for nonnative invasive species, consistent with ER P5, and has avoided or mitigated in a way that appropriately protects the ecosystem through the DCP's design features, mitigation measures, ECs, CMP, and Adaptive Management and Monitoring Program paired with permit requirements and DWR's department-wide invasive species programs. As described in Sec. 3.6.2.1, *Golden Mussel*

*(*Limnoperna fortunei*) Management at Project Facilities through State- and Department-Wide Invasive Species Programs*, DWR is committed to managing invasive aquatic species. The Delta Plan's amended Ch. 4, *Protect, Restore, and Enhance the Delta Ecosystem* (DCP.AA2.1.00020), includes strategies to assist in guiding state and local agency actions related to the Delta (Wat. Code § 85300(a)); one of those core strategies is "Core Strategy 4: Protect Native Species and Reduce the Impact of Nonnative Invasive Species." Core Strategy 4 explains that nonnative species now affect virtually all components of the Delta ecosystem. DWR has fully considered that nonnative invasive species are already present in the covered action area, and the DCP includes measures that, when implemented, will avoid exacerbating the impacts of preexisting nonnative invasive species and minimize the potential for new introductions of nonnative invasive species. **[A9-80]**

4 Conclusion

DWR's Certification is supported by substantial evidence in the administrative record, and appellants fail to carry their burden to prove otherwise. Thus, the appeals should be denied.

If the DSC determines that substantial evidence does not support DWR's detailed findings for one or more policies because it interprets one or more of the policies in a manner that renders it infeasible to demonstrate full consistency with those policies, the appeals should nevertheless be denied because DWR's certification of consistency with the coequal goals under GP 1 (b)(1) (Cal. Code Regs., tit. 23, § 5002(b)(1)) is supported by substantial evidence, and appellants have not carried their burden to prove otherwise.

Thus, DWR respectfully requests that the DSC deny all the appeals.

5 Objections

5.1 Standards Applicable to Objections

The following three objections are frequently applicable to materials that appellants request be added to the administrative record or for which they request official notice. To avoid repetition, DWR describes the standards applicable to each of these three objections below and then refers to the objections by name when applying them to appellants' requests in Table 5-1.

1. **Objection – Irrelevant:** This request should be denied because appellant does not carry their burden to submit "specific evidence" proving that the subject evidence is relevant to the only issue before the DSC in this appeal: whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support the Department's conclusion[]" that the DCP is consistent with the Delta Plan's policies, "even though other conclusions might also be reached. (See Cal. Code Regs., tit. 14, § 15384.)" (*DSC Decision No. D20242 In the Matter of the Department of Water*

Resources' Certification of Consistency for 2024-2026 Proposed Geotechnical Activities (DSC Decision No. C20242) (DCP.X2.1.00043, pp. 11–12); Cal. Code Regs., tit. 23, §§ 5002(b)(1), 5027(c), 5032(c).) The DSC does not supplement the record with irrelevant evidence. (Cal. Code Regs, tit. 23, § 5027(c); see also DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) Furthermore, it is inappropriate to take judicial notice of irrelevant material, so the DSC should not take official notice of irrelevant evidence. (See *State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 442 (*State Fund*) ["only relevant material is subject to judicial notice"]; see also *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571, 579 [extra-record evidence is not admissible under the substantial evidence standard of review because "the Legislature intended courts to generally consider only the administrative record in determining whether a quasi-legislative administrative decision was supported by substantial evidence"].)

2. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** The request should be denied because appellant has not satisfied the requirement to submit "specific evidence" showing that the writing: (i) was "part of the record before the certifying agency prior to the date of the council's receipt of the certification," or (ii) contains "generally accepted[4] technical or scientific matter within the council's jurisdiction" or "fact[s] that may be judicially noticed…" (Cal. Code Regs., tit. 23, §§ 5026(b), (c), 5032(c).)

3. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents:** Appellant's request should be denied because the DSC does not take official notice of the truth of the contents of writings (as defined in Evidence Code section 250), even if it does take official notice of a writings' existence. (DSC Decision No. C202110 (DCP.AA2.7.00006, p. B-1, fn. 18); see also *Herrera v. Deutsche Bank Nat'l Tr. Co.* (2011) 196 Cal.App.4th 1366, 1375 (*Herrera*) ["While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein."]; *Tulare Lake, supra,* 115 Cal.App.5th at p. 349, fn. 2.)

Table 5-1. Objections to Appellants' Requests to Supplement the Record or for Official Notice

Appeal Document	DWR's Objections
A1-1 Commission Maps 1–7 and Construction Timeline Map	**Objection – Irrelevant:** Appellant is not using the Maps to challenge whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support the Department's conclusions"; rather appellant alleges that they got the GIS

[4] See *People v. Venegas* (1998) 18 Cal.4th 47, 85 (criminal law case where court reasoned that "generally accepted" within the qualified scientific community means it is accepted by a clear majority of the members of that community).

Appeal Document	DWR's Objections
(referred to as "Map 8") (Maps 1–8 collectively are referred to as "Maps") **[A1-26, A1-47, A1-48, A1-53, A1-WS-5, A1-WS-6, A1-WS-15]**	data from DWR itself that was used to develop the FEIR included in DWR's record. (DPC Appeal Request for Official Notice, Arguments 1—3.) Appellant's written submission cites the Maps to support scale and timeline for the construction of DCP, generally using information from DWR's record as the only cited source of their Maps. Appellant does not seek to use the Maps to show that DWR's record lacks sufficient data. Rather, appellant wants to use the Maps to persuade the DSC that DWR should have reached different conclusions based on evidence which already is in DWR's record. In other words, appellant is inviting the DSC to "reweigh the evidence" in the record and reach a different conclusion than DWR did, which is precisely what the "substantial evidence" standard prohibits the DSC from doing. Thus, the Maps are not relevant to the issue before the DSC—whether DWR has enough relevant information in the record to support the conclusion that the DCP is consistent with the Delta Plan policies. Because the DSC does not supplement the record with irrelevant evidence, the request should be denied. (See Cal. Code Regs., tit. 23, § 5027(c); see also DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Does Not Satisfy "Specific Evidence" Requirement:** While appellant alleges that the Maps were created using GIS data sent by a DWR staff person, appellant does not allege that Maps were part of the record before certifying agency prior to certification. (Cal. Code Regs., tit. 23, § 5026(b), (c).) Whether or not the raw GIS data and information used from the FEIR were available to DWR prior filing the Certification, the Maps were not part of the record before DWR prior to certification. In fact, appellant alleges that the GIS data used to create Maps 1–7 was received by appellant on Oct. 31, 2025, and Nov. 12, 2025. (DPC Appeal Request for Official Notice, fn. 1.) Maps were created after DWR submitted the Certification on Oct. 17, thus the DSC should not consider them now. (See DSC Decision No. C20242 (DCP.X2.1.00043, pp. 10–11).) Appellant has not provided any evidence or argument to support their claims that these Maps are "generally accepted technical matter" when created so recently and not reviewed for accuracy by DWR or other parties in the relative scientific or technical community. (Cal. Code Regs., tit. 23, § 5032(c).) Appellant also alleges that some elements in Maps, specifically Maps 2–5, include impact text boxes with text derived from the FEIR and thus, are not reasonably subject to dispute, but this line of reasoning ignores the fact that the Maps did not exist when DWR submitted the Certification, must be taken in context, and may not be an accurate portrayal when taken out of context. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A1 Attachment 2	**Objection – Irrelevant:** Attachment 2 is a technical analysis about an entirely different covered action, Lookout Slough, which is unrelated to the DCP. Furthermore, appellant cites Attachment 2 to support their

Appeal Document	DWR's Objections
Technical Analysis – Consistency with Policy G P1(b)(3): Best Available Science Methods Used to Estimate Recreational Use, Lookout Slough **[A1-WS-16]**	argument that the DCP FEIR does not meet Delta Plan requirements. (A1-WS-16.) This argument is irrelevant. "The Council does not adjudicate the adequacy of an EIR under CEQA. To the extent there may be disagreement as to the validity of a finding in the EIR, that is outside the Council's jurisdiction and should be addressed through the CEQA process." (DSC Decision No. C20215, p. 24.) Thus, Attachment 2 is irrelevant and should not be officially noticed. Because the DSC does not supplement the record with irrelevant evidence, appellant's request should be denied. (See Cal. Code Regs., tit. 23, § 5027(c); see also DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** There is no evidence that DWR used Attachment 2, an analysis for a different covered action entirely, in developing its Certification for the DCP. Appellant offers no "specific evidence" to support their request and therefore, it should be denied. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A2 California State Assembly Resolution Recognizing the Courtland Pear Fair (Exhibit 2) **[A2-WS-9, A2-WS-10]**	**Objection – Irrelevant:** Appellant points to Exhibit 2, California State Assembly recognition of the Courtland Pear Fair to support DP P1 and DP P2 by illustrating that the Pear Fair is a significant agricultural and community institution. (A2-WS-8.) DP P1 is about urban development, which is not applicable to the DCP. Whether the Pear Fair is a significant agricultural and community institution is irrelevant to whether DWR's record contains enough information to support DWR's DP P2 consistency determination.
A-3, A-6, A-7 Exhibits 1-3 **[A3-23, A3-24, A3-54, A3-55, A3-56, A3-58, A6-39, A6-40, A6-41, AS-WS-78]**	**Objection – Does Not Meet the DSC's Supplemental Record Requirements:** An appellant's request to supplement the record or for official notice by the DSC must be in the required format to be considered and shall include "The document or information that is the subject of the request." (Cal. Code Regs., tit. 23, §§ 5026(b), (c), 5032(c).) No documentation or information was included for appellant's Exhibits 1–3; thus, the request should be denied. **Objection – Irrelevant:** Exhibits 1–3, the Declarations of Graham Bradner and the Transcript of May 31, 2024, Hearing, are irrelevant. Appellant alleges that there is overlap between the law and facts in "that DCP litigation matter" and the Certification. In the DCP litigation, although the trial court was reversed on appeal, the trial court ruled that before DWR may undertake preconstruction DCP geotechnical activities, DWR must first file a certification of consistency for the entire DCP. (*Tulare Lake, supra,* 115 Cal.App.5th at pp. 358–359.) DWR has now filed the Certification for the entire DCP. To the extent appellant alleges there is significant overlap in fact and law between the CEQA litigation and the Certification, that does not make Exhibit 1 relevant. While the geotechnical investigations would have provided additional substantial

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	evidence, the question before DSC is whether substantial evidence in this administrative record supports DWR's Certification. Exhibits 1–3 are irrelevant to that question. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A-3, A-6, A-7 Exhibit 10 **[AS-WS-42, AS-WS-43, AS-WS-78]**	**Objection – Irrelevant:** Appellant describes Exhibit 10 as a "DWR publication that pertains to the Delta and salinity management in Delta diversions" and the publication title describes a new desalination facility. However, appellant fails to explain any relevance between Exhibit 10 and the Certification. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** There is no evidence that DWR used Exhibit 10 in developing its Certification. In fact, Exhibit 10 is irrelevant and about an entirely different matter, a new desalination project for brackish water in Antioch. Exhibit 10 does not contain "generally accepted technical or scientific matter within the council's jurisdiction" or "fact[s] that may be judicially noticed by a court." Thus, Exhibit 10 should not be officially noticed by the DSC. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A-3, A-6, A-7 Appellant's request that DWR and DSC supplement documents related to "early consultation" **[A3-19, A6-23, A7-21, AS-WS-78]**	**Objection – Does Not Meet the DSC's Supplemental Record Requirements:** An appellant's request to supplement the record or for official notice by the DSC must be in the required format to be considered and shall include "[t]he document or information that is the subject of the request." (Cal. Code Regs., tit. 23, §§ 5026(b), (c), 5032(c).) No documentation or information was included for appellant's request for "early consultation materials" even though appellant stated that some of these records at issue were produced in response to a Public Records Act request. Thus, this broad request should not be considered.
A-3, fn. 160 State Water Resources Control Board, Nov. 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel (Letter) **[A3-50, A6-60, A7-50, A9-20, A9-74, A9-82]**	**Objection – Does Not Meet the DSC's Supplemental Record Requirements:** An appellant's request to supplement the record or for official notice by the DSC must be in the required format to be considered and shall include "[t]he document or information that is the subject of the request." (Cal. Code Regs., tit. 23, §§ 5026(b), (c), 5032(c).) No request for notice nor a request to supplement this record was in appellant's written submission, nor did appellant include the document, as required. Thus, the request should be denied. **Objection – Irrelevant:** This letter is irrelevant to whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support the Department's conclusion[]" that the DCP is consistent with the Delta Plan's policies. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A-5 DOF California Population Excel, Row 2, Columns AJ-	**Objection – Irrelevant:** The Population Excel is not relevant to whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support DWR's conclusion" that the DCP is consistent with the Delta Plan's policies. At

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BD; Sheet "Data" (Population Excel) **[A5-WS-35]**	most, this Population Excel illustrates that other methodologies are available to develop population growth projections. However, the existence of other methodologies is not relevant to whether DWR's record contained substantial evidence to support the conclusion that the DCP is consistent with the Delta Plan policies. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A8: Document 1 **[A8-12, A8-WS-7]**	**Objection – Irrelevant:** The purpose for which appellant offers Document 1 has nothing to do with consistency with Delta Plan policies. Instead, appellant offers this document to show that DWR intends to exercise its water rights. (A8-12.) Because no Delta Plan policy prohibits DWR from exercising its water rights, the document is irrelevant. (Cal. Code Regs., tit. 23, §§ 5001(k)(1)(E), 5027(c); see also DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Document 1 meets the requirements of California Code of Regulations, tit. 23, sections 5026(c) and 5032(c) (hereafter referred to as Section 5032(c)) are not "specific evidence" sufficient to support a request to supplement the record and for official notice. (Cal. Code Regs., tit. 23, § 5032(c).) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A8: Document 2 **[A8-31, A8-WS-8]**	**Objection – Irrelevant:** Document 2 should not be added to the record because it does not relate to the DCP. Instead, it relates to California WaterFix, a different and now-defunct project that is not relevant to the adequacy of DWR's record to support its determination that the DCP is consistent with the Delta Plan policies. Appellant's claim that a different party submitted Document 2 during the CEQA process does not make it relevant. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that a different party (Central Delta Water Agency) submitted Document 2 during the CEQA process does not establish that the writing was before DWR when it submitted its Certification, or that it properly is subject to official notice. (See Cal. Code Regs., tit. 23, §§ 5026(b), (c), 5032(c).) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A8: Documents 5–10 **[A8-40, A8-41, A8-42, A8-WS-11, A8-WS-12, A8-WS-13, A8-WS-14, A8-WS-15, A8-WS-16]**	**Objection – Irrelevant:** Appellant offers Documents 5–10 to support Argument 7 in its appeal. (See A8-53, A8-54, A8-55, A8-56, A8-57, A8-58) But appellant's Argument 7 does not allege that the DCP violates any specific Delta Plan policies. (A8-39, A8-40.) Because appellant has not submitted any "specific evidence" tying Argument 7 to any alleged inconsistency with any specific Delta Plan policies, Documents 5–10 are irrelevant to the DSC's evaluation of the appeal. (Cal. Code Regs., tit. 23, §§ 5001(k)(1)(E) [compliance with the Delta Plan policies constitutes compliance with the Delta Plan]; 5002(b)(1) [same].) Appellant's claims

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	that it submitted these writings in different proceedings do not make the documents relevant to the DSC's resolution of this appeal. (See DSC Decision No. C20215, p. 24; see also Cal. Code Regs., tit. 23, § 5022(e); see also Wat. Code § 85225.25.) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Documents 5–10 meet the requirements of Section 5032(c) do not constitute "specific evidence" sufficient to support a request for official notice. (Cal. Code Regs., tit. 23, § 5032(c).) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A8: Document 11 **[A8-46, A8-WS-17]**	**Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that a different party (Central Delta Water Agency) submitted Document 11 to a different agency (U.S. Army Corps of Engineers) for a different purpose (National Environmental Policy Act (NEPA) comment period) does not establish that the document was before DWR when it submitted its Certification. (See Cal. Code Regs., tit. 23, §§ 5026(b), (c).) Furthermore, appellant provides no evidence or argument to support its allegation that Document 11 contains "generally accepted technical or scientific matter" or information "that may be judicially noticed by a court." (Cal. Code Regs., tit. 23, § 5032(c).) Furthermore, the document includes *six* disclaimers stating that users should *not* rely upon its maps' "accuracy or currentness." (A8-WS-17) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A8: Documents 13, 15 **[A8-46, A8-WS-19, A8-WS-21]**	**Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that a different party (Central Delta Water Agency) submitted these documents to a different agency (U.S. Army Corps of Engineers) for a different purpose (NEPA comment period) does not establish that the documents were before DWR when it submitted its Certification here. (See Cal. Code Regs., tit. 23, §§ 5026(b), (c).) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 1 **[A9-44, A9-60, A9-WS-7]**	**Objection – Irrelevant:** Even if appellant had carried their burden to prove that Document 1's authors have some expertise in their fields—which appellant has not done—the most that Document 1 could show is that appellant has found three people who disagree with DWR's own experts. But as DSC has explained, disagreements between experts are irrelevant under the "substantial evidence" standard—"a disagreement among experts considering the same facts in the record does not establish a lack of substantial evidence . . ." (DSC Decision No. C20188 (DCP.AA2.1.00098, p. 23).) "[W]hat constitutes the best available scientific data or assumptions is itself a scientific determination for which [the certifying agency] is owed deference, provided its conclusions are fairly traceable to the record." (*Ibid.,* citing *San Luis, supra,* 776 F.3d at pp. 995–996.) Appellant's request should be denied.

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	Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement: Document 1 is an "OPINION" piece as stated on the very first page. The authors' opinions are not generally accepted or undisputed. Indeed, appellant cites Document 1 precisely because it demonstrates that its authors disagree with DWR's conclusions. To obtain judicial notice, therefore, this DSC's regulation required appellant to provide "specific evidence" proving that Document 1's authors' opinions are so "generally accepted" that DWR cannot reasonably dispute them. Because appellant has not submitted sufficient evidence to carry this burden, appellant's request for official notice should be denied. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Documents 2–3 **[A9-45, A9-50, A9-58, A9-60]**	**Objection – Irrelevant:** Documents 2 and 3 were created after DWR submitted its Certification, and they memorialize opinions and arguments of the Delta Protection Commission (DPC), which is pursuing its own appeal of DWR's Certification. Document 2 is a Nov. 13, 2025, letter that shows only that the DPC considered responding to DWR's Certification—it proves nothing about the sufficiency of the evidence that supports DWR's Certification filed a month earlier. Document 3 is maps illustrating the DPC's staff's opinions. Even if the DSC did take official notice of a document's contents—which it does not—conflicting opinions do not establish a lack of substantial evidence in the record, especially when those opinions are not expressed until a month after the record has closed. (See DSC Decision No. C20188 (DCP.AA2.1.00098, p. 23); see also DSC Decision No. C202110 (DCP.AA2.7.00006, p. B-1, fn. 18); see also *Herrera, supra,* 196 Cal.App.4th at p. 1375.) **Objection – Appellant Did Not Satisfy The "Specific Evidence" Requirement:** Appellant's bare allegations about these documents does not satisfy the DSC's "specific evidence" requirement—otherwise, the requirement would have no meaning. (*People v. Zunis* (2005) 134 Cal.App.4th Supp. 1, 5 (*Zunis*).) Appellant's request should be denied. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 4 **[A9-20, A9-71, A9-74]**	**Objection – Irrelevant:** At the most, Document 4 shows that DWR changed its decision about when to submit the Certification. DWR's Environmental Program Manager for the DCP told the DSC about this change of plan during the DSC's Apr. 24, 2025, meeting (DCP.AA5.1.00012.0001). DWR's decision about when to file the Certification proves nothing about the adequacy of the record supporting DWR's determination regarding DCP's compliance with the flow objectives set forth in the State Water Resources Control Board's Bay-Delta Water Quality Control Plan. (Resolution 2018-0059; See Cal. Code Regs., tit. 23, § 5005.)
A9: Document 6 **[A9-70, A9-74]**	**Objection – Irrelevant:** Even if the DSC did take judicial notice of documents' contents—which it does not—a different agency's Hearing Officer's decision in a different proceeding before a different

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	decisionmaker governed by different laws and a different standard of proof is irrelevant to whether DWR's Certification is supported by substantial evidence. (See Cal. Code Regs., tit. 23, § 5027(c); see also DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12); see also *State Fund, supra,* 50 Cal.App.5th at p. 442.) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** By itself, appellant's bare allegations about Document 6 cannot be enough to satisfy the DSC's "specific evidence" requirement. (See *Zunis*, *supra*, 134 Cal.App.4th Supp. at p. 5.) Appellant's request should be denied. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 13 **[A9-24]**	**Objection – Irrelevant:** The DSC does not take notice of the truth of writings' contents, and the mere fact that this Document 13 exists is irrelevant to whether substantial evidence supports DWR's Certification. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Document 13 meets Section 5032(c)'s requirements is not "specific evidence" sufficient to support appellant's request for official notice. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) This is especially true here because appellant does not offer any information about who wrote this document or about where the information in this document came from. Appellant's request should be denied. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Documents 16-18 **[A9-24, A9-25]**	**Objection – Irrelevant:** The fact that Documents 16–18 exist is not relevant to whether substantial evidence supports DWR's Certification. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) Appellant's requests should be denied.
A9: Document 19 **[A9-24, A9-31, A9-35, A9-WS-2]**	**Objection – Not An Official Act:** Appellant has violated the DSC's requirement that appellant provide "specific evidence" sufficient to support appellant's request for official notice based on the claim that Document 19 is an "official act[] of the United States Bureau of Reclamation." (Cal. Code Regs., tit. 23 § 5032(c).) According to its header, furthermore, this article is not a Bureau of Reclamation act: Reclamation did not write it, Reclamation did not publish it, and it does not memorialize any Reclamation study or work product. **Objection – Irrelevant:** The fact that Document 19 exists is not relevant to whether substantial evidence supports DWR's Certification. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12); *Herrera, supra,* 196 Cal.App.4th at p. 1375.) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Document 19 meets Section 5032(c)'s requirements are not "specific evidence" sufficient to support appellant's request for official notice. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) Appellant's request should be denied.

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A9: Document 20 **[A9-24, A9-27, A9-28, A9-30, A9-35]**	**Objection – Irrelevant:** The fact that appellant's Document 20 exists is not relevant to the question of whether the documents that DWR actually included in its record "support a fair argument" that DWR's determinations are correct. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Document 20 meets Section 5032(c)'s requirements are not "specific evidence" sufficient the satisfy this DSC's requirement. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 23 **[A9-33, A9-35]**	**Objection – Irrelevant:** The fact that appellant's Document 23 exists is not relevant to the question of whether the documents that DWR actually included in its record "support a fair argument" that DWR's determinations are correct. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that Document 23 meets Section 5032(c)'s requirements is not "specific evidence" sufficient to satisfy the DSC's requirement. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 24 **[A9-WS-12]**	**Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant has not complied with the DSC's requirement that appellant submit "specific evidence" showing that Document 24 is subject to official notice under Section 5032(c). In fact, appellant misstates the text of the writing itself. Document 24 does not show that "the Council advised" DWR of anything—it is an email from one DSC staff member. In addition, the document shows that at least one of the DSC's other staff members was unsure whether the DSC could "extend" the relevant policy language as far as the first staff member suggested. Therefore, assuming that Document 24 is genuine—an assumption that appellant offers no "specific evidence" to prove—appellant is incorrect when it asserts that the first staff member's policy interpretation "is not subject to reasonable dispute." (Cal. Evid. Code, § 452(h).) To the contrary, the writing shows on its face that least one other staff member questioned that interpretation, and appellant has submitted no evidence suggesting that the interpretation was known to or adopted by the DSC. The document's text also shows that it does not memorialize any "official action." (Cal. Evid. Code, § 452(c).) At most, this document reflects deliberations by members of the DSC's staff—who do not themselves have any authority to "officially" interpret Delta Plan policies—about how the DSC might interpret one of its policies. Because DSC staff does not have authority to adopt official Delta Plan policy interpretations, the deliberations reflected in the document are irrelevant to the question of whether substantial

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	evidence supports DWR's Certification. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Irrelevant:** See above. **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Documents 25, 27 **[A9-WS-2]**	**Objection – Irrelevant:** The fact that appellant's Documents 25 and 27 exist is not relevant to the question of whether the documents that DWR included in its record "support a fair argument" that DWR's determinations are correct. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that Document 25 and 27 meet Section 5032(c)'s requirements is not "specific evidence" sufficient to satisfy this DSC's requirement. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Document 26 **[A9-23]**	**Objection – Irrelevant:** As appellant notes, this document only provides background information about the Delta Independent Science Board (DISB). Nothing about the DISB's background is relevant to the only issue before the DSC in this appeal: whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support the Department's conclusions" in its Certification, "even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384; DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegation that Document 26 meets Section 5032(c)'s requirements is not "specific evidence" sufficient to satisfy this DSC requirement. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A9: Documents 28, 29 **[A9-16, A9-35, A9-WS-2, A9-WS-6]**	**Objection – Irrelevant:** The fact that appellant's Documents 28 and 29 exist is not relevant to the question of whether the documents that DWR actually included in its record "support a fair argument" that DWR's determinations are correct. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Even if the DSC did take notice of the truth of documents' contents (it does not), appellant's requests still should be denied because appellant has not satisfied the DSC's requirement that appellant submit "specific evidence" showing that Documents 28 and 29 contain "facts and propositions that are not reasonably subject to dispute." (Cal. Code Regs., tit. 23, § 5032(c); Evid. Code, § 452(c), (h).) Appellant's bare allegation that Documents 28 and 29 satisfy Section 5032(c)'s requirements is not "specific evidence" sufficient to satisfy this Section 5032(c) mandate. (See *Zunis, supra*, 134 Cal.App.4th Supp. at p. 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**

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A10: Exhibits 1–3, 5–7, 9, 12 **[A10-WS-5, A10-WS-6, A10-WS-7, A10-WS-8, A10-WS-10, A10-WS-11, A10-WS-12, A10-WS-17]**	**Objection – Irrelevant:** The fact that the appellant's Exhibits 1–3, 5–7, 9, and 12 exist is not relevant to the question of whether the documents which DWR included in its record "support a fair argument" that DWR's determinations are correct. (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) Exhibits 1-3, 5-7, and 9 are irrelevant because they relate only to projects other than DCP. Appellant's proffered Exhibit 12, a meeting held by Metropolitan Water District (MWD), to show that levee considerations were not included in MWD's discussion of DCP Certification. The fact that a separate agency discussed the DCP Certification and the contents of their discussion are not relevant to whether DWR included enough relevant information in its record to support the conclusion that the DCP is consistent with the Delta Plan policies. Appellant's request should be denied. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant does not offer specific evidence suggesting that these exhibits contain undisputed "facts or propositions," nor does it offer specific evidence suggesting that these exhibits are "capable of immediate [or] accurate determination by resort to sources of reasonably indisputable accuracy." Appellant does not even offer specific evidence indicating that these exhibits are what they purport to be. Instead, appellant offers only their own cursory, unsupported allegations. Such allegations cannot by themselves satisfy Section 5032(c)(3)(B)'s "specific evidence" requirement. (See *Zunis*, *supra*, 134 Cal.App.4th 1, 5.) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**
A10: Exhibits 10, 11 **[A10-WS-5, A10-WS-15, A10-WS-16]**	**Objection – Irrelevant:** Exhibits 10 and 11 should not be added to the record because they have nothing to do with the DCP, nor the Certification that is at issue in this appeal. Instead, these exhibits purport to be permits issued by other agencies for an entirely different project. Because they have nothing to do with the DCP, these exhibits are irrelevant. **Objection – Appellant Did Not Satisfy "Specific Evidence" Requirement:** Appellant's bare allegations that Exhibits 10 and 11 meet the requirements of Section 5032(c) do not constitute "specific evidence" sufficient to support a request for official notice. (Cal. Code Regs., tit. 23, § 5032(c).) **Objection – DSC Does Not Take Notice of Truth of Writings' Contents**

5.2 Motion to Strike Citations to Extra-Record Arguments

DWR respectfully requests the DSC to strike and disregard: (1) the following citations from appellants' submissions; (2) the documents to which these citations refer, and (3) any argument by appellants related to these citations and documents. DWR makes this request because the documents that appellants cite and refer to are not part of the record in this

appeal, and because they are not the subject of any request to supplement the record or for official notice under this DSC's regulations. (See Cal. Code Regs., tit. 23, §§ 5026 or 5032.)

The Water Code limits this proceeding to the administrative record. (See Wat. Code, § 85225.25.) The only issue before the DSC is whether DWR's record contains "enough relevant information and reasonable inferences so that a fair argument can be made to support the Department's conclusions" that the DCP is consistent with the Delta Plan policies, "even though other conclusions might also be reached." (DSC Decision No. C20242 (DCP.X2.1.00043, pp. 11–12).) If appellants wish to rely upon documents that are not in DWR's record, then appellants must request that the DSC add them to the record pursuant to California Code of Regulations, title 23, section 5026 or section 5032 and the DSC must grant the request.

In their written submissions, however, appellants cite and rely upon the following documents, which are not part of DWR's record, and which are not the subject of appellants' requests to supplement the record or for official notice (Table 5-2). DWR respectfully requests that the DSC rebuff appellants' attempt to end-run the Water Code and DSC's regulations, and that the DSC strike and disregard appellants' improper citations, arguments, and extra-record documents.

Table 5-2. Documents Not Part of DWR's Record and Not Subject of Appellants' Requests to Supplement the Record or for Official Notice

Appellant	Locations of Improper Citation	Improperly Cited Document
A1	Nov. 17, 2025, Delta Protection Commission Public Resources Code 29773 Response to an Appeal of the Delta Conveyance Project Certification of Consistency ("DCP Master Appeal Letter"), p. 7, fn. 2. **[A1-43]** Attachment B to DCP Master Appeal Letter, p. 9, fn. 16 **[A1-59]**	Maven's Notebook. Notebook Feature: Metropolitan Committee Discusses Delta Conveyance Project Ahead of December Vote on Funding Planning Costs
A1	Attachment B to DCP Master Appeal Letter, p. 9, fn. 19 **[A1-59]**	Delta Counties Coalition Response to Governor Newsom's Delta Tunnel Proposal and "Accountability Action Plan": The Delta is Not for Sale
A1	Attachment B to DCP Master Appeal Letter, p. 10, fn. 20 **[A1-59]** Attachment E to DCP Master Appeal Letter, p. 3, fn. 7 **[A1-74]**	California Delta Residents Survey Data Explorer
A3	Sacramento County's and SCWA's Nov. 17, 2025, Appeal of DWR's Certification of Consistency for Delta Conveyance Project	How noise pollution quietly affects your health

Appellant	Locations of Improper Citation	Improperly Cited Document
	(C20257) ("A3/A6/A7 Appeal Letter"), p. 21, fn. 66 **[A3-33]**	
A3	A3 Appeal Letter, p. 21, fn. 66 **[A3-33]**	Decreasing Noise Exposure Should Be a Public Health Priority
A3	A3 Appeal Letter, p. 40, fn. 160 **[A3-50]**	State Water Resources Control Board (State Water Board), Nov. 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel [DWR]
A6	SacSewer's Nov. 17, 2025, Appeal of DWR's Certification of Consistency for Delta Conveyance Project (C20257), p. 40, fn. 183 **[A6-60]**	State Water Board, Nov. 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel [DWR]
A7	City of Stockton's Nov. 17, 2025, Appeal of DWR's Certification of Consistency for Delta Conveyance Project (C20257), p. 30, fn. 127 **[A7-50]**	State Water Board, Nov. 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel [DWR]

5.3 Documents Already Part of the Administrative Record

DWR does not object to the following requests because the documents are included in the administrative record and were considered by DWR as part of the administrative process:

- A2-WS-9: Exhibit 1 (DCP.D3.1.03946)
- A4-WS-8: Exhibits 1 (DCP.D3.1.03946), 2 (DCP.D3.2.00547), 3 (DCP.D4.1.00043), and 4 (DCP.D3.1.03821)
- A3, A6, A7: Exhibits 4–8 (DCP.AA5.1.00001) and 9 (DCP.AA5.1.00021)
- A8-WS-9, A8-WS-10, A8-WS-18, A8-WS-20: Exhibits 3 (DCP.V2.33.00015), 5 (DCP.V2.33.00003), 12 (DCP.H.1.00047), and 14 (DCP.D2.3.00583)
- A9: Exhibits 5 (DCP.V3.1.00042), 7–11 (DCP.AA5.1.00001), 12 (DCP.AA2.1.00072), 14–15 (DCP.AA2.1.00069), 21 (DCP.D6.1.00185), and 22 (DCP.D3.1.03924)
- A10-WS-5, A10-WS-9, A10-WS-13, A10-WS-18: Exhibits 4 (DCP.D4.1.00097), 8 (DCP.D4.1.00043), and 13 (DCP.D3.1.00507)

However, DWR has not completed a line-by-line document comparison to confirm each document submitted by the appellant is identical to the version in the record. Therefore, DWR requests that the DSC consider the AR version of the documents rather than the versions submitted by appellants.