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STATE OF CALIFORNIA
DELTA STEWARDSHIP COUNCIL

<p>Delta Protection Commission</p> <hr/> <p>Courtland Pear Fair</p> <hr/> <p>County of Sacramento and Sacramento County Water Agency</p> <hr/> <p>Steamboat Resort</p> <hr/> <p>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</p> <hr/> <p>Sacramento Area Sewer District</p> <hr/> <p>City of Stockton</p> <hr/> <p>South Delta Water Agency</p> <hr/> <p>San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta</p> <hr/> <p>DCC Engineering Co., Inc. Appellants, v. California Department of Water Resources,</p>	<p>(Appeal Nos. C20257-A1, C20257-A2, C20257-A3, C20257-A4, C20257-A5, C20257-A6, C20257-A7, C20257-A8, C20257-A9, C20257-A10)</p> <p>In the Matter of the Department of Water Resources' Certification of Consistency for the Delta Conveyance Project</p> <p>[DRAFT] DECISION No. D20257</p> <p>BEFORE: Julie Lee, Chair; Gayle Miller, Vice-Chair; Diane Burgis; Susan Eggman; Maria Mehranian; Ann Patterson; Daniel Zingale.</p>
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Respondent.	
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A. OVERVIEW OF DECISION

1. Summary of Findings

On February 26-27, 2026, the Delta Stewardship Council (“Council”) conducted a hearing on 10 appeals challenging the Department of Water Resources’ (“Department” or “DWR”) Certification of Consistency Number C20257 (“Certification”) for the Delta Conveyance Project (“DCP” or “Covered Action”). The Council, having taken the appeals under submission, and after careful consideration of the Certification, appeals, record, party arguments and written submissions, finds that:

1. There is substantial evidence in the record to support the Department’s determination that the following Delta Plan Policies are not applicable to the DCP: DP P1, RR P1, RR P2, RR P3, RR P4 and G P1(c).
2. Appellants failed to meet their burden, and there is substantial evidence in the record to support the Department’s findings of consistency for the following Delta Plan policies: G P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P2, ER P3, and ER P4.
3. Appellants have shown, in relevant part, that the Certification is not supported by substantial evidence in the record with respect to Delta Plan policies ER P5 and DP P2 as follows:
 - a. Appellant San Joaquin County has shown that the record does not support the finding that the Department fully considered how the DCP could improve the habitat conditions for the golden mussel, and how the Department would avoid or mitigate improved habitat conditions for the golden mussel in a way that appropriately protects the ecosystem; and
 - b. Appellant Sacramento Area Sewer District (“Sac Sewer”) has shown that the record does not support the finding that the DCP’s proposed Twin Cities Complex (“TCC”) was sited to avoid or reduce a conflict with Harvest Water to the extent feasible.

The matter is therefore **remanded to the Department** for reconsideration of the Covered Action as to:

1. Delta Plan Policy ER P5 to fully consider and avoid or mitigate the potential for DCP facilities to improve habitat conditions for the nonnative invasive golden mussel (see *infra.*, p. 99); and
2. Delta Plan Policy DP P2 to consider and avoid or reduce conflicts between the siting of the TCC and Sac Sewer’s Harvest Water regarding

1 agricultural use, groundwater recharge, and Sandhill Crane habitat to the
2 extent feasible (see *infra.*, p. 107).

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

4 The detailed findings for this decision are set forth by Delta Plan policy and
5 issues appealed in Section D. Detailed Findings.

6 **2. Annual Implementation Report**

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

13 Therefore, pursuant to Water Code Section 85210(h)¹, the Council requests that
14 the Department submit an annual implementation report to the Council no later than
15 March 1 of each year, starting March 1, 2028, and present that report to the Council
16 within 90 days of submission. In the annual report, the Department is required to
17 include, but need not be limited to, including, all the following:²

18 1. Matters related to the Delta as an evolving place:

- 19 a. Updates regarding engagement with environmental justice
20 communities, tribes, and local agencies.
- 21 b. Updates regarding the Department's efforts to survey and develop
22 treatment plans for cultural landscapes.
- 23 c. Updates on excavated materials, including storage of Reusable
24 Tunnel Material ("RTM") and disposal of hazardous materials.
- 25 d. Updates on construction in the Delta, and efforts to reduce noise
26 and traffic.
- 27 e. Updates on implementation of the Community Benefits Program
28 ("CBP"), including funding available and funding expended.
- 29 f. Updates on implementation of the Accountability Action Plan,
30 including the Ombudsman Program.

¹ Water Code Section 85210(h) enables the Council to "request reports from state, federal, and local government agencies on issues related to the implementation of the Delta Plan." (Wat. Code § 85210, subsection (h).)

² The content of the report may change at the Council's discretion as the DCP project moves forward.

1 facilities in the Delta that will be part of the SWP and will be operated in coordination
2 with existing SWP south Delta water diversion facilities.” ([DCP.AA1.2.00001](#), p. 15.)

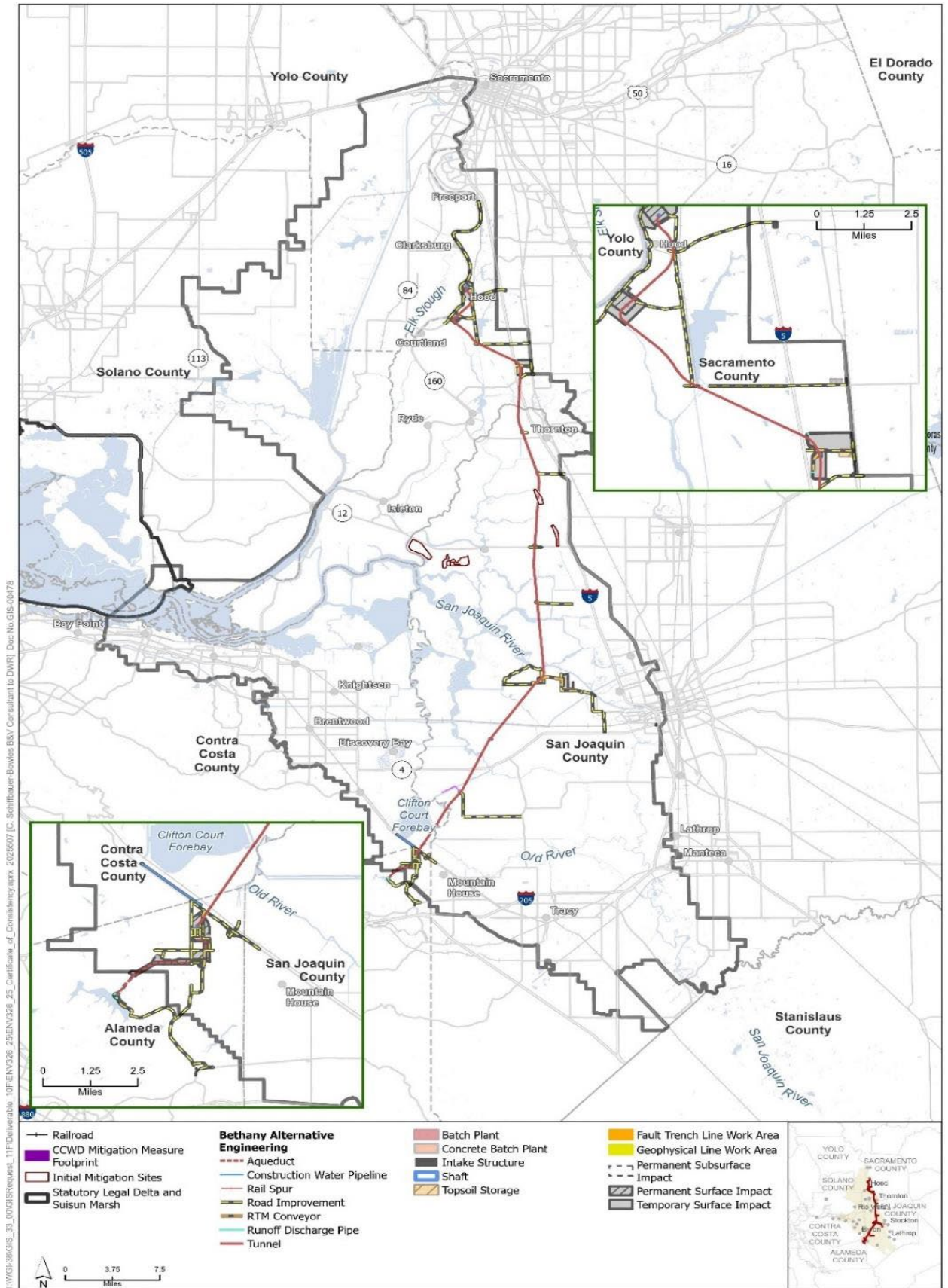
3 The Covered Action includes the following components:

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

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

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**Attachment 1 to Resolution 2026-03
Draft Decision No. D20257
April 20, 2026**



3. Department’s Findings of Consistency

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

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

⁵ The Department identified Policy “G P1(b)(1)” as applicable and consistent, however that policy provides an exception to the requirement that covered actions be consistent with all applicable Delta Plan regulatory policies. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1).) The exception is not applicable here, as the Department has not made an express finding that consistency with a specific Delta Plan regulatory policy is not feasible. (Ibid.)

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

C. APPEAL PROCESS

1. Appeals

Any person that claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of a government-sponsored flood control program, may file an appeal with the Council challenging a certification of consistency. (Wat. Code, § 85225.10, subd. (a).) The appeal must be filed no later than 30 days after the submission of the certification of consistency. (Wat. Code, § 85225.15.)

Ten separate appeals of the Certification were timely filed on November 17, 2025, by the following parties⁶:

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Appeal No.	Appellant(s)	Short Reference	Policies Appealed
C20257-A1	Delta Protection Commission ⁷	Commission	G P1(b)(2), G P1(b)(3), DP P2
C20257-A2	Courtland Pear Fair	Pear Fair	DP P1, DP P2
C20257-A3	County of Sacramento, Sacramento County Water Agency	County of Sacramento	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2
C20257-A4	Steamboat Resort	Steamboat Resort	ER P1, DP P1, DP P2
C20257-A5	San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, Restore the Delta, California Sportfishing Protection Alliance, Center for Biological Diversity, Friends of the River, California Indian Environmental Alliance, Sierra Club California, Little Manila Rising	SF Baykeeper	G P1(b)(1), G P1(b)(3), WR P1, ER P1, ER P2, ER P3, ER P4, ER P5, DP P2
C20257-A6	Sacramento Area Sewer District	Sac Sewer	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2

⁷ The Council’s regulations allow the Delta Protection Commission to appear as a non-party to provide comments on issues raised by party-appellants as an agency with expertise on matters that may affect the unique cultural, recreational, and agricultural values of the Delta. (Cal. Code Regs., tit. 23, § 5028.) Here, the Commission filed an appeal and is a party-appellant. It was not the intent of the Council to provide the Commission an additional role as a non-party expert agency when the Commission is also a party to the appeals. The Commission may either proceed as an appellant or comment as a non-party agency under section 5028, but not both.

C20257-A7	City of Stockton	City of Stockton	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2
C20257-A8	South Delta Water Agency	SDWA	G P1(b)(1), G P1(b)(2), G P1(b)(3), ER P1, DP P2
C20257-A9	San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, Local Agencies of the North Delta	San Joaquin County	G P1(b)(1), G P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P5, DP P2
C20257-A10	DCC Engineering Co., Inc.	DCC Engineering	DP P2, RR P1, RR P3

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2 The Council consolidated the appeals pursuant to California Code of
3 Regulations, title 23, section 5031. (Notice of Appeals of Certification of Consistency,
4 November 18, 2025, p.3.) A Notice of Hearing and Schedule of Written Submissions
5 was subsequently issued on November 24, 2025.⁸ Appellants filed written submissions
6 in support of their appeals on January 2, 2026. The Department filed its written
7 submission in response to the appeals on February 9, 2026. The Council held a two-
8 day hearing on February 26-27, 2026. The Appellants and the Department attended the
9 hearing as required, and the Council took up the matter for consideration.

10 **2. Administrative Record**

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

⁸ Appellants jointly requested an extension of time for the hearing deadlines. (See Letter re: Request for Stipulation to Extend Hearing Deadlines Pursuant to Cal. Code Regs., tit. 23, § 5030, subd. (b)(1).) The Department did not object. Presiding Officer Julie Lee granted Appellants’ request and extended the hearing date and the deadlines for written submissions.

1 The Department certified the administrative record for the Covered Action on
2 November 24, 2025. The Council or its executive officer may supplement the record if
3 the Council or its executive officer determines that additional information was part of the
4 record before the Department but was not included in the record submitted to the
5 Council. (Cal. Code Regs, tit. 23, § 5026.) The Council may also take official notice of
6 any generally accepted technical or scientific matter within the Council’s jurisdiction, and
7 of any fact that may be judicially noticed by the courts of this State. (Cal. Code Regs.,
8 tit. 23, § 5032.) The parties may request that the Council supplement the record with
9 additional documentation or information that was part of the record before the certifying
10 agency but was not included in the certifying agency’s submission to the Council. (Cal.
11 Code Regs., tit. 23, § 5026.)

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

18 **3. Council’s Review of Appeals**

19 The Council does not approve or reject certifications of consistency. “Instead,
20 State or local agencies self-certify Delta Plan consistency, and the Council serves as an
21 appellate body for those determinations.” (*Delta Stewardship Council Cases*, supra, 48
22 Cal.App.5th 1014, 1042.) The Delta Plan’s regulatory policies are enforced through “the
23 Council’s appellate authority and oversight over covered actions.” (*Ibid.*) The Council
24 denies appeals or remands to the certifying agency for reconsideration. (Wat. Code, §
25 85225.25.)

26 The Delta Reform Act provides that the appropriate standard of review on appeal
27 is whether the certification of consistency is supported by substantial evidence⁹ in the
28 record. (Wat. Code, § 85225.25.) Under the substantial evidence standard, the
29 agency’s findings are presumed to be supported by the administrative record, and it is
30 the Appellant’s burden to show that they are not. (*Poncio v. Dept. of Resources*
31 *Recycling & Recovery* (2019) 34 Cal.App.5th 663, 669.) “[I]n light of the record as a
32 whole, it is [the] Appellant’s burden to demonstrate that the administrative record does
33 not contain sufficient evidence to support the agency’s decision.” (*State Water*
34 *Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749.) To do so, the
35 Appellant must address all the material evidence, not merely evidence supporting its
36 position. (*Delta Stewardship Council Cases*, supra, 48 Cal.App.5th 1014, 1072.) The
37 failure to discuss the record that supports the agency’s decision forfeits the substantial
38 evidence argument. (*Ibid.*)

⁹ 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.)

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

9 **D. CONSISTENCY ANALYSIS AND DETAILED FINDINGS**

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

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

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

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

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

¹¹ Acronyms used throughout this Decision are listed in Exhibit B attached hereto.

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a. Policy Requirements

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

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In addition, subsection (b)(1) recognizes an exception to the consistency requirement in cases where, “based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible.” In those cases, “the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because on whole, that action is consistent with the coequal goals. *That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible,¹² and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals.*” (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1)., emphasis added) This overriding consideration provision is analyzed in this section.

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

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

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([DCP.AA1.2.00001](#), p. 199.) The Department therefore presents consistency with G P1(b)(1) as a contingency argument; in the event the Council determines that the DCP

¹² The Delta Plan defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Cal. Code Reg., tit. 23, § 5001, subd. (p).)

1 is inconsistent with one or more Delta Plan policies. However, for the overriding
2 consideration to apply the certifying agency must have complied with the requirements
3 of G P1(b)(1). Here, the Certification does not identify one or more regulatory policies
4 that the DCP would be inconsistent with, nor describe why consistency is not feasible
5 ([DCP.AA1.2.00002](#), p. 60). Accordingly, the Department failed to avail itself of the G
6 P1(b)(1) Delta Plan policy consistency overriding consideration for any Delta Plan
7 policy.

8 **b. Appeals and Analysis**

9 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,
10 SDWA, and San Joaquin County argue that the Department's findings under G P1(b)(1)
11 concerning how compliance with Delta Plan regulatory policies advances the coequal
12 goals are speculative and unsupported, and that the findings downplay recreational
13 losses and environmental justice issues ([County of Sacramento, Appeal](#), pp. 4-8, [SF](#)
14 [Baykeeper, Appeal](#), p. 22, [Sac Sewer, Appeal](#), pp. 4-7, [City of Stockton, Appeal](#), pp. 4-
15 8, [San Joaquin County, Appeal](#), pp. 1-5; Combined, Writ. Sub., p. 49, 52; San Joaquin
16 Writ. Sub., pp. 14-15). Appellants question the Department's reliance on willing sellers
17 and eminent domain to meet their commitments, criticizing the proposed CBP's lack of
18 demonstrable benefits ([SF Baykeeper, Appeal](#), p. 24; SF Baykeeper Writ. Sub. pp. 10-
19 11). Appellants further assert that the Department ignores the Delta as a Tribal Cultural
20 Landscape, and that claimed water supply benefits are based on unreviewed
21 documents, unsupported modeling, and overly optimistic projections ([Sac Sewer,](#)
22 [Appeal](#), pp. 5-7; [County of Sacramento, Appeal](#), p. 6-7; City of Stockton Appeal, p. 4-5;
23 SF Baykeeper Writ. Sub., p. 20)

24 In effect, the Appellants contend that the DCP is not consistent with the coequal
25 goals. However, G P1(b)(1) does not establish a distinct coequal goals consistency
26 requirement that can be challenged by appellants. Rather, an appellant may contest a
27 certification's finding that the G P1(b)(1) exception applies to excuse consistency with a
28 specific Delta Plan policy. Whereas here, the G P1(b)(1) exception has not been
29 established, there is no appealable issue as to overall consistency with the coequal
30 goals.

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

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

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

39 The Department certifies that the DCP is consistent with Delta Plan Policy G
40 P1(b)(2). Six Appellants (Commission, County of Sacramento, Sac Sewer, City of

1 Stockton, SDWA and San Joaquin County) raise substantive arguments that it is not.
 2 This analysis considers the Appellants’ arguments that specific DCP mitigation
 3 measures (“MMs”) are applicable but are not equally or more effective than applicable
 4 MMs adopted and incorporated into the Delta Plan. For the reasons discussed below,
 5 the Council finds that that the Appellants have failed to meet their burden, and that there
 6 is substantial evidence to support the Department’s finding that the Covered Action is
 7 consistent with G P1(b)(2). Therefore, the Council **denies the appeals** as follows:

G P1(b)(2) Appeal Issue	Appellants	Decision
MM 4-1(a)	SDWA	Denied
MM 4-1(e)	San Joaquin County	Denied
MM 4-2	Sac Sewer, County of Sacramento	Denied
MM 6-2	Commission	Denied
MM 7-1	Commission, County of Sacramento	Denied
MM 10-1	Commission	Denied
MM 10-3	Commission	Denied
MM 18-1	County of Sacramento, Commission	Denied
MM 18-2	San Joaquin County	Denied
MM 20-1	City of Stockton	Denied

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a. Policy Requirements

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G P1(b)(2) states:

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

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

1 In short, this regulation requires that, for any covered action not exempt from
2 CEQA, the Final EIR must include the applicable MMs adopted as part of Appendix O
3 and incorporated into the Delta Plan as amended June 23, 2022, or substitute MMs that
4 are at least as effective.¹³ Because the DCP is not exempt from CEQA, it must comply
5 with this requirement. In its certification of consistency, the Department identifies DCP
6 design features, environmental commitments (“ECs”), and MMs that it states are equally
7 or more effective than the applicable Delta Plan MMs.¹⁴

8 **b. Certification**

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

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

17 **c. Appeals and Analysis**

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

21 As discussed in more detail below, Appellants contend both that the Department
22 failed to include applicable MMs, and that the Department failed to include MMs that are
23 equally or more effective than applicable Delta Plan measures. The Council does not
24 opine on the adequacy of mitigation measures under CEQA but considers only whether

¹³ As a threshold matter, G P1(b)(2) uses the term “applicable” to describe the mitigation measures required to be included in a covered action. If a Delta Plan Measure is not factually “applicable” to the specific covered action in question, then G P1(b)(2) does not require it to be included. The Council relies on the EIR for impacts relevant to the G P1(b)(2) analysis. For example, under CEQA, where an environmental analysis concludes that a project has no potential significant impacts, CEQA does not require mitigation measures. (Pub. Res. Code § 21081, subd. (a)(1); Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont. Ed. Bar 2018) § 18.3.) Mitigation also is not required if measures are included in the project to reduce significant impacts. (See CEQA Guidelines § 15126.4(a)(1)(A) (Cal. Code Regs., tit. 14, § 15126.4(a)(1)(A)) (distinguishing between mitigation measures and measures proposed to be included in the project).)

¹⁴ The Council does not adjudicate the adequacy of a mitigation measure included in an EIR under CEQA. To the extent there may be disagreement as to the validity of a finding in the EIR, that is outside the Council's jurisdiction and should be addressed through the CEQA process or the courts.

1 the Department’s findings concerning applicable Delta Plan MMs are supported by
2 substantial evidence in the record. Below, the Council considers each appealed Delta
3 Plan MM identified in appeals of this policy. MMs are listed in the order they appear in
4 the Mitigation Crosswalk Table ([DCP.AA1.2.00020](#)).¹⁵

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

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

11 The Department states in the Certification that the CMP includes measures that
12 are “the same as, equal to, or more effective than DP MM 4-1 because it would address
13 impacts on habitat for special-status plant and wildlife species (including fish) as well as
14 natural communities (including wetlands and other waters or “aquatic resources”) that
15 may result from the construction and operation of the project” ([DCP.AA1.2.00020](#), p. 8).

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

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

¹⁵Many Delta Plan mitigation measures include multiple components and lengthy text. For each Delta Plan mitigation measure considered here, the Council has paraphrased select, relevant components to concisely frame the discussion. Please see Delta Plan Appendix O for the full text of each Delta Plan mitigation measure ([DCP.AA2.1.00097](#)).

1 SDWA also contends that the Department did not adopt the Internal Technical
2 Review Panel's recommendation to situate the tunnel further east and did not address
3 their assessment of stakeholder and community concerns (SDWA Appeal, p. 32). In
4 response to the memo from the Internal Technical Review Panel, the Delta Conveyance
5 Design and Construction Authority ("DCA") addressed each recommendation in detail
6 ([DCP.D3.2.00861](#), Attachment 2, pp. 32-34). Ultimately, the DCA did not concur with
7 the panel's comments, particularly those regarding relocating the DCP corridor to the
8 east.

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

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

18 San Joaquin County claims there are no equal or more effective MMs included in
19 the Department's G P1(b)(2) mitigation crosswalk table or elsewhere in the Certification
20 that addresses the golden mussel (San Joaquin County Appeal, p. 3). Delta Plan MM 4-
21 1(e) requires any project whose construction or operation could lead to introduction or
22 facilitation of invasive species establishment to develop and implement an invasive
23 species management plan, including several prescribed components. The management
24 plan should be based on best available science, should be developed in consultation
25 with CDFW and local experts, and should include all the following: eradication methods
26 (if feasible); management and early detection methods; notification requirements; best
27 management practices for preconstruction and post-construction periods; and
28 monitoring, remedial actions, and reporting requirements. Appellant asserts that the
29 Department did not meet Delta Plan MM 4-1(e) standards in two respects: (1) it did not
30 apply best available science to an invasive species management plan for golden
31 mussel, and (2) it failed to include MMs for golden mussel proliferation that could result
32 from the DCP (San Joaquin County Appeal, p.5, San Joaquin County Writ., Sub., p.12,
33 [DCP.V1.1.00019](#)).

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

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

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

15 In its written submission, the Department affirms its commitment to managing
16 invasive species using the best available science, especially regarding the golden
17 mussel. The Department outlines its monitoring and data collection activities, as well as
18 its prevention, containment, population suppression, and eradication strategies for
19 zebra and quagga mussels as proof of their commitment to controlling invasive
20 mollusks. The Department notes its active participation in various multiagency and
21 statewide initiatives focused on treating invasive nonnative species as new threats
22 arise—such as the Golden Mussel Task Force mentioned in the State- and Department-
23 Wide Invasive Species Programs section of the Certification (Department, Writ. Sub.,
24 pp. 136, 163–165; [DCP.AA1.2.00001](#), pp. 159–160). The Department also states that
25 once the DCP is constructed, it will become part of the SWP and as such must
26 comply with all applicable programs, plans, and other commitments related to managing
27 the potential for new introductions of or improved habitat conditions for nonnative
28 invasive species ([DCP.AA1.2.00001](#), pp. 159–163).

29 While the Department and Appellant provide multiple substantive arguments
30 regarding compliance with MM 4-1(e), the DCP Final EIR was certified and the DCP
31 was approved by the Department in December 2023. The golden mussel was first
32 observed in the Delta in October 2024. As referenced above, the Council relies on the
33 Final EIR for impacts and applicable mitigation measures for G P1(b)(2) purposes. For
34 this reason, the Council finds that MM 4-1(e) was not applicable to the DCP regarding
35 the golden mussel at the time the Department’s mitigation requirements were
36 established, and therefore, the Council **denies the appeal** under GP 1(b)(2) as to
37 issues related to mitigation measures concerning the golden mussel.¹⁶ The mitigation

¹⁶ Should the Department complete future CEQA analyses on the DCP that lead to revised certifications of consistency with the Delta Plan, it is the Council’s expectation that such certifications would provide evidence of a management plan for golden mussel.

1 measure requirement of G P1(b)(2) is distinct from the requirements of ER P5. ER P5 is
2 not limited to the Final EIR.

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

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

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

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

19 Sac Sewer and County of Sacramento argue the Department has not
20 demonstrated that the DCP included Delta Plan MM 4-2(a) and MM 4-2(f) or any
21 substitute measure to select project sites that *avoid* sensitive natural communities and
22 habitat. ([Sac Sewer, Appeal](#), p. 9; [County of Sacramento, Appeal](#), p. 11). Specifically,
23 Appellants argue that MM 4-2(a) and 4-2(f) do not require project proponents to
24 *ameliorate* impacts to sensitive communities and habitat, but rather that it expressly
25 requires proponents to site projects in the first instance to *avoid* these resources ([Sac](#)
26 [Sewer, Appeal](#), p. 9; [Sac County Appeal](#), p. 11). Appellants claim that because the
27 Department did not select sites for DPC facilities specifically to avoid sensitive habitat,
28 the Council cannot find that the DCP incorporates Delta Plan MM 4-2(a) and 4-2(f) or
29 their equivalent ([Sac Sewer, Appeal](#), p. 10; [County of Sacramento, Appeal](#), p. 12).
30 Appellants argue that had the intent of MM 4-2(a) and 4-2(f) been to require mitigation
31 that lessens or avoids certain impacts to sensitive habitat instead of initially siting
32 projects to avoid impacts, these measures would not both have included specific
33 language requiring agencies to “select project site(s) that would avoid habitats of
34 special-status plant species.” ([Sac Sewer, Appeal](#), p. 10; [County of Sacramento,](#)
35 [Appeal](#), pp. 11-12).

36 However, Appellants do not consider MM 4-2(e), which states “where impacts to
37 special-status species are unavoidable, compensate for impacts by restoring or
38 preserving in-kind suitable habitat on-site, or off-site, or by purchasing restoration or
39 preservation credits (in compliance with the California Endangered Species Act and
40 federal Endangered Species Act for affected State- or federally-listed species from a
41 mitigation bank that serves the project site and that is approved by the appropriate

1 agencies, in consultation with the appropriate regulatory agencies (at ratios that offset
2 the temporary loss of habitat value).” ([DCP.AA2.1.00097](#)). MM 4-2(e) thereby
3 addresses requirements for situations where impacts to such species are unavoidable.
4 Considering this provision, the concern raised by the Appellant does not constitute an
5 appealable issue under G P1(b)(2) related to Sandhill Crane habitat avoidance.

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

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

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

24 “The project’s [MMs] BIO-2a and BIO-2b would avoid and minimize
25 potential impacts on special status species by avoiding sensitive natural
26 communities where such species may occur. [MM] BIO-2c is the same as, equal
27 to, or more effective than the DP MM 4-2 strategy to select project site(s) that
28 would avoid habitats of special-status species. MM BIO-2c would require that
29 [the Department] will coordinate with electric utilities to design and construct
30 power transmission and distribution lines and the locations of necessary
31 appurtenances such as supports and substations to avoid sensitive terrestrial
32 and aquatic habitats to the maximum extent feasible. In cases where sensitive
33 habitat cannot be feasibly avoided, disturbance will be minimized to the greatest
34 degree feasible, and disturbed areas will be returned as near as reasonably and
35 practically feasible to preconstruction conditions by reestablishing surface
36 conditions through carefully grading and reconstructing features”
37 ([DCP.AA1.2.00020](#), p. 12).

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

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

15 As stated previously, Appellants assert that the DCP does not include mitigation
16 equivalent to Delta Plan MM 4-2(a), on the grounds that the TCC was not sited to avoid
17 special-status species, specifically Lesser and Greater Sandhill Cranes. However, MM
18 4-2(e) provides requirements to be undertaken in situations where impacts to such
19 species are unavoidable. Considering this provision, the concern raised by the
20 Appellant does not constitute an appealable issue under G P1(b)(2) related to Sandhill
21 Crane habitat avoidance.

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

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

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

39 County of Sacramento asserts that the DCP does not include mitigation
40 equivalent to Delta Plan MM 4-2(a), on the grounds that the TCC was not sited to avoid
41 special-status species, specifically Crotch’s bumble bee. However, as stated above, MM

1 4-2(e) provides requirements to be undertaken in situations where impacts to such
2 species are unavoidable. Considering this provision, the concern raised by the
3 Appellant does not constitute an appealable issue under G P1(b)(2) related to Crotch’s
4 bumble bee habitat avoidance.

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

6 Appellants Sac Sewer and County of Sacramento argue that MM 4-2(a) and 4-
7 2(f) require the siting of the DCP, and in particular the TCC, to avoid special-status
8 species habitat, and claim the project is inconsistent with GP1(b)(2). However, they
9 overlook MM 4-2(e), which addresses mitigation requirements when impacts cannot be
10 avoided. Therefore, the Council finds that Sac Sewer and County of Sacramento have
11 failed to meet their burden, and that there is substantial evidence in the record to
12 support the Department’s finding that the DCP is consistent with G P1(b)(2) for MM 4-2,
13 and the Council ***denies the appeals***.

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

15 Delta Plan MM 6-2 requires compensation for the loss or reduction in
16 environmental values due to a conflict with an adopted plan or policy by implementing
17 the following or equally effective measures: (a) “Recording a deed restriction that
18 ensures permanent conservation and mitigation on other property of equal or greater
19 environmental mitigation value; (b) Creating a buffer or barrier between uses; (c)
20 Redesigning the project or selecting an alternate location that avoids or mitigates the
21 impact; and/or (d) Restoring disturbed land to conditions to provide equal or greater
22 environmental value to the land affected by the covered action” ([DCP.AA2.1.00097](#), pp.
23 56-57).

24 The Commission argues that the Department has not identified “quantifiable and
25 achievable measures to avoid or mitigate for known and unknown farmland losses
26 resulting from the DCP that are equal or more effective than” what is described in Delta
27 Plan MM 6-2 ([Commission, Attachment D](#), p. 4). The Department’s DCP MM AG-1
28 requires that farmland will be preserved at a 1:1 ratio “to the extent feasible,” but the
29 Commission argues this is vague and lacks necessary implementation detail
30 ([Commission, Attachment D](#), p. 5). The Commission further argues that although the
31 Department’s CBP funds could be used to purchase agricultural conservation
32 easements and other land-based mitigation, this amount is insufficient, and this is only
33 possible with community-driven support ([Commission, Attachment D](#), p. 5).

34 In the Certification’s mitigation crosswalk table, the Department identifies project
35 design features, the CMP, and DCP MM AG-1 and MM BIO-45a as equivalent to Delta
36 Plan MM 6-2 ([DCP.AA1.2.00020](#), p. 24). DCP MM AG-1 would “mitigate the loss of
37 permanently converted Important Farmland at an acreage ratio of at least 1:1”
38 ([DCP.AA1.2.00020](#), p. 25). MM AG-1 states “[t]o the extent feasible, any rights to land
39 acquired for the purpose of mitigation of agricultural land conversion will be of equal or
40 better farmland quality than the land that was permanently converted”
41 ([DCP.D1.1.00133](#), p. 39). The 1:1 acreage ratio will be achieved through “a combination

1 of acquisition and dedication of agricultural land, acquisition of development rights or
2 conservation easements to permanently protect agricultural land, or payment of in-lieu
3 fees to fully fund the acquisition and maintenance of such real property interests by a
4 third party” ([DCP.AA1.2.00020](#), p. 25).

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

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

27 Delta Plan MM 7-1 requires covered actions to undertake certain activities to
28 minimize specific identified environmental impacts to Farmlands, lands zoned for
29 agriculture, and lands subject to a Williamson Act contract, including conversion to
30 nonagricultural uses. The Commission and County of Sacramento contend that the
31 MMs proposed by the Department are not equal or more effective than Delta Plan MM
32 7-1. The relevant provisions of MM 7-1 are discussed below in more detail as they
33 pertain to each issue presented.

34 Appellants argue that the proposed MMs for farmland loss are inadequate
35 because they are not specific, enforceable, or project-level, and that the mitigation
36 components in the optional Agricultural Land Stewardship (“ALS”) Strategy are
37 speculative (Commission, [Attachment D](#), p. 5-7). Appellants allege that during the DCP
38 planning process, agricultural land was preferred for launch site locations, and that
39 temporary conversions of agricultural land are effectively permanent. Appellants further
40 claim that the DCP fails to adequately assess the impacts of fragmentation and does
41 not provide sufficient buffer areas between agricultural lands and project facilities

1 (Commission, [Attachment D](#), p.6, [Sac County, Appeal](#), p.10). The Council considers
2 each issue below.

3 **(a) Farmland was prioritized for facility siting (MM 7-**
4 **1(a) and MM 7-1(b))**

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

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

25 The Commission claims that during the DCP planning process, agricultural land
26 was ranked as preferable to other land use types for launch site locations, claiming that
27 agricultural land was prioritized for siting because “tunnel launch shaft location criteria
28 first excluded lands for wildlife refuges or preserves and lands managed for flood
29 management and associated habitat” (Commission, Attachment D, pp. 2-3)
30 ([DCP.D1.1.00135](#), p. 10). The Appellant refers to the following evidence in the record to
31 support its appeal for Delta Plan MM 7-1: Delta Protection Commission (DPC). Letter on
32 Delta Conveyance Project Draft EIR, DPC, December 14, 2022, pp. 6-7; Delta Plan
33 Ecosystem Amendment Mitigation Monitoring and Reporting Program
34 ([DCP.AA2.1.00097](#)); DCP Final EIR, Ch. 15 ([DCP.D1.1.00133](#)); Final EIR Appendix
35 15B ([DCP.D1.1.00135](#)); DCP CER (Final Draft) ([DCP.D4.3.00001](#)); DCP Map Book
36 ([DCP.D4.3.00056](#)); G P1(b)(2), Attachment 1 [DCP.AA1.2.00018](#); Delta Plan and DCP
37 Mitigation Crosswalk Table ([DCP.AA1.2.00020](#)); DCP Certification of Consistency with
38 the Delta Plan ([DCP.AA1.2.00001](#)); FINAL EIR, Vol 2, Ch 2, Table 4-2 comments 409-
39 22- 409-23 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#)); DCP Final EIR Chapter 3
40 ([DCP.D1.1.00010](#)).

1 analyzed in Chapter 15, Agricultural Resources. The project design features and [MMs]
2 are the same as, equal to, or more effective than Delta Plan MM 7-1 to avoid, minimize
3 and reduce effects related to conversion of Farmland to nonagricultural use”
4 ([DCP.AA1.2.00020](#), p. 24). Specific to Delta Plan MM 7-1(c), the Department identifies
5 DCP MM AG-1 for preservation of Farmland to offset the loss of permanently converted
6 Farmland ([DCP.AA1.2.00020](#), p. 24). The Department refers to the following evidence
7 in the record to support its consistency with GP1(b)(2) Delta Plan MM 7-1(c): DCP
8 Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); G P1(b)(2),
9 Attachment 1: Delta Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#));
10 Final EIR Ch. 15 ([DCP.D1.1.00133](#)).

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

29 The Appellant refers to the following evidence in the record to support its appeal:
30 Delta Protection Commission (DPC). Letter on Delta Conveyance Project Draft EIR,
31 DPC, December 14, 2022, 6-7; Delta Plan Ecosystem Amendment Mitigation Monitoring
32 and Reporting Program ([DCP.AA2.1.00097](#)); DCP Final EIR Ch. 15 ([DCP.D1.1.00133](#));

¹⁸ The Commission further argues that the record lacks substantial evidence demonstrating that additional mitigation measures are infeasible (Commission, Writ. Sub., p. 13). The Commission argues that “[the Department] did not evaluate higher or geographically targeted mitigation ratios for losses of Prime and Important Farmland within affected Delta subregions” and that identified ALS Strategies are voluntary and non-binding and not equal or more effective than the Delta Plan (Commission, Writ. Sub., pp. 13-14). The Commission further states that “the record does not demonstrate that [the Department] evaluated additional design modifications, construction sequencing changes, or consolidation of staging areas to reduce the acreage or duration of farmland disturbance” (Commission, Writ. Sub., p. 14). These actions are not required by Delta Plan MM 7-1 and therefore are not considered herein.

1 Final EIR Appendix 15B ([DCP.D1.1.00135](#)); DCP Concept Engineering Report (“CER”)
2 (Final Draft) ([DCP.D4.3.00001](#)); DCP Map Book ([DCP.D4.3.00056](#)); G P1(b)(2),
3 Attachment 1: Delta Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#));
4 DCP Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); Final EIR Vol
5 2, Ch 2, Table 4-2 comments 409-22- 409-23 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#));
6 DCP Final EIR Chapter 3 ([DCP.D1.1.00010](#)).

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

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

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

¹⁹ Regarding implementation of AG-1, the Department specifies that “any agricultural conservation easements acquired pursuant to this mitigation strategy will be held by a qualified organization that has the legal and technical ability to hold and administer agricultural conservation easements for the purpose of conserving and maintaining lands in agricultural production” ([DCP.D1.1.00133](#), p. 39) and preserved agricultural lands will be in the Delta Counties (Sacramento, San Joaquin, Contra Costa, Alameda, Solano, and Yolo) ([DCP.D1.1.00133](#), p. 39).

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

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

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

14 In its Certification, the Department states:

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

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

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

1 restoration standards, soil replacement criteria, or monitoring to ensure agricultural
2 viability following construction” (Commission, Writ. Sub., p.14).

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

13 In Chapter 15 of the DCP Final EIR, temporary impacts are defined as “areas of
14 the construction footprint where farmland conversion would only last through the period
15 of active construction at a given site and is expected to be a short-term effect (i.e.,
16 generally the conversion not extending beyond 2 years at a given location)”
17 ([DCP.D1.1.00133](#), p. 26). Temporary impacts the Department refers to in its Final EIR
18 include short-term activities including: “various field investigations conducted during the
19 preconstruction and construction phases... excavation and installation of some of the
20 utility infrastructure, specifically power transmission and SCADA lines... once the
21 installation process for these buried utilities lines is complete, the excavations would be
22 subsequently backfilled to pre-project contours to allow potential agricultural use to
23 resume” ([DCP.D1.1.00133](#), p. 26). The Department will conduct agronomic testing to
24 identify impacts and appropriate remediation options for affected areas
25 ([DCP.D1.1.00133](#), p. 26). The primary goal of land reclamation efforts will be to “restore
26 the soil quality and condition” and actions taken will vary by site and soil base, and are
27 detailed in the Preliminary Site Reclamation Plan in CER App. I1 ([DCP.D4.3.00044](#), p.
28 4).

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

1 too small and isolated from other active farmland under the same ownership to be
2 farmed economically” ([DCP.D1.1.00133](#), p. 30).

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

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

10 Delta Plan MM 7-1(e) requires designing project features to minimize
11 fragmentation or isolation of farmland, and requires remaining non-project areas to be of
12 a size sufficient to allow viable farming operations and classification as farmland
13 ([DCP.AA2.1.00097](#), p. 56). This can be accomplished by “acquiring easements, making
14 lot line adjustments, and merging affected land parcels into units suitable for continued
15 commercial agricultural management” (G P1(b)(2), Appendix O, [DCP.AA2.1.00097](#), p.
16 56).

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

28 The Commission argues that effects of fragmentation on agriculture are not
29 adequately described, and that the Certification thus “does not assess their implications
30 for long-term agricultural use potential” ([Commission, Attachment D](#), p. 6.). The
31 Commission claims there is no detail on how fragmentation was avoided through DCP
32 design modifications or assessed for long-term impacts on agricultural viability
33 ([Commission, Attachment D](#), p.6.). The Commission argues “[the Department] did not
34 quantify fragmentation, establish viability thresholds, or analyze how bisected parcels
35 and remnant fields affect long-term farm operations” (Commission, Writ. Sub., p. 15).²⁰

²⁰ The Commission prepared maps in Attachment A, which are not part of the record, that it claims depict “locations where construction and permanent facilities would break up formerly contiguous farmland into smaller or irregular pieces” that are “unlikely to remain viable for commercial production” ([Commission, Attachment D](#), p. 6.). Commission “staff review of [the]

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

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

29 The Department also points to project design features and ALS strategies that
30 demonstrate compliance with Delta Plan MM 7-1(e) ([DCP.AA1.2.00020](#), pp. 24-25).
31 Final EIR Appendix 15B details the implementation of ALS strategies E1.3.1 and E1.1.
32 Here, the Department states: “Of the numerous measures that have been taken to
33 minimize the extent of agricultural land that would be taken out of production and
34 prevent fragmentation of active farmlands, the most important was the adoption of
35 tunnel conveyance in lieu of surface conveyance (i.e., canal). As described in Final EIR
36 Appendix 3A, two alternatives using either lined or unlined canals instead of the tunnel
37 were initially considered (“Dual Conveyance East Canal” and “Dual Conveyance West
38 Canal”), but eliminated from further consideration during the alternatives screening

project footprint datasets further indicates that fragmentation impacts are substantial and largely undisclosed, including isolated agricultural remnants, narrow and irregular parcels, and lands severed from infrastructure access” (Commission, Writ. Sub., p. 15). No further evidence outside of the extra-record analysis conducted by Commission is provided to substantiate this claim.

1 process because canals would have surface impacts that would result in greater
2 impacts on agricultural operations...” ([DCP.D1.1.00135](#), p. 8). “A canal would have
3 greater impacts on land use, agricultural operations, and multiple other resources than
4 the proposed project, which would include a tunnel that would be constructed
5 underground with tunnel shafts every 4 to 6 miles.” ([DCP.D1.1.00011](#), p. 37).

6 Evidence in the record supports that the Department conducted an analysis of
7 fragmentation using quantifiable metrics and thresholds and details how fragmentation
8 was avoided through design modifications. The Council finds that the Commission has
9 failed to meet its burden to show that the Department did not assess the implications of
10 fragmentation on long-term agricultural use potential and that there is substantial
11 evidence in the record to support the Department’s finding that the DCP is consistent
12 with G P1(b)(2) for MM 7-1(c).

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

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

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

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

1 Appellants contend that fencing is not a buffer option identified in Delta Plan MM
2 7-1(h) and that the measure specifically provides that buffer widths be determined on a
3 project-by-project basis, which is not discussed in the Certification ([DCP.AA1.2.00020](#),
4 pp. 25-26) ([County of Sacramento, Appeal](#), p.10). Appellants argue that the Department
5 does not provide evidence for how or why certain facilities are setback from the
6 fenceline and others are not, and that a fence would not protect agricultural lands from
7 dust or noise: “a fence would not ensure that dust from tunnel muck piles does not
8 adversely affect agricultural activities on adjacent properties, including grazing livestock
9 or dust sensitive crops, nor would it shield adjacent agricultural operations from
10 operational noise that may negatively impact livestock or farm workers” ([County of](#)
11 [Sacramento, Appeal](#), p. 10).

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

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

41 In addition to fencing, the Department describes two other forms of buffers: non-
42 disturbance buffers applied during construction and species-specific buffers applied
43 during construction and operation of the project. The Department states: “The project

1 would establish non-disturbance buffers during construction as described in Chapter 13,
2 Terrestrial Biological Resources, and EC-14, which is the same as, equal to, or more
3 effective than DP MM 7-1” ([DCP.AA1.2.00020](#), p. 25). Additional details regarding non-
4 disturbance buffers is provided in Chapter 13 of the Final EIR. Buffer distances vary by
5 species and conservation status, and their extent will be established by qualified wildlife
6 biologist(s) ([DCP.D1.1.00112](#)). EC-14: Construction Best Management Practices for
7 Biological Resources also states that non-disturbance buffers will be “established and
8 maintained as necessary” during construction to protect special-status species
9 ([DCP.D1.1.00012](#), p. 26).

10 In its written submission, the Department notes that these species-specific
11 measures and the CMP “include ‘good neighbor’ policies derived from the [ALS]
12 Framework and Strategies ([DCP.D3.1.03889](#), pp. 8, 31–39) that include the creation of
13 buffer zones between habitat preserves and farmland, which will help to reduce or
14 eliminate exposure to pests and disease on neighboring lands, prevent overspray of
15 chemicals onto habitat lands, and assist with a successful transition between different
16 land uses” (Department Writ. Sub., p. 118). The use of “good neighbor” policies to
17 create buffer zones between habitat and farmland is documented in the CMP
18 ([DCP.D1.1.00017](#), p. 3F-13).

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

- 30
- 31 • MM BIO-14: Requires a buffer of 250 feet between construction activities and
32 vernal pool fairy shrimp critical habitat.
 - 33 • MM BIO-18: Requires an avoidance area of at least 165 feet around elderberry
34 shrubs.
 - 35 • MM BIO-21: Requires a non-disturbance buffer of 50 feet around Crotch’s
36 bumble bee nests as identified until the nest is no longer active or until project
37 activities in the area are completed.

38 MM 7-1(h) identifies several examples of suitable buffers between project
39 facilities and agricultural lands (e.g., drainage swales, trails, roads, linear parkways), but
40 does not prescribe use of a specific type of buffer to be used on a case by case basis
41 ([DCP.AA2.1.00097](#), p. 57). For this reason, the Council finds that County of
42 Sacramento has failed to meet its burden and that there is substantial evidence in the
43 record to support the Department’s finding that it has established mitigation

1 requirements for agricultural buffers the same as or better than that required by DP MM
2 7-1(h).

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

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

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

10 Delta Plan MM 10-1 requires certifying agencies for covered actions to consult
11 with California Native American tribes, conduct surveys for tribal cultural,
12 archaeological, submerged cultural, and landscape resources, and avoid and protect
13 these resources (Appendix O, [Delta Plan Ecosystem Amendment Mitigation Monitoring
14 and Reporting Program], pp.15-17 (Cal. Code Regs., tit. 23, app.O.)). It also includes
15 provisions for coordinating with the California Native American Heritage Commission
16 (“NAHC”), State Historic Preservation Officer (“SHPO”), and State Lands Commission
17 (“SLC”) (Appendix O, [Delta Plan Ecosystem Amendment Mitigation Monitoring and
18 Reporting Program], pp.15-17 (Cal. Code Regs., tit. 23, app.O.)). The Commission
19 contends that the MMs proposed by the Department are not equal or more effective
20 than Delta Plan MM 10-1.

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

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

35 Delta Plan MM 10-1(c) and 10-1(d) include requirements to survey for cultural
36 landscape resources before ground-disturbing activities begin (Appendix O, [Delta Plan
37 Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.16 (Cal. Code
38 Regs., tit. 23, app.O.)). Delta Plan MM 10-1(e) requires that certifying agencies
39 implement strategies to avoid or protect cultural landscapes and other cultural resource
40 types (Appendix O, [Delta Plan Ecosystem Amendment Mitigation Monitoring and

1 Reporting Program], p.16 (Cal. Code Regs., tit. 23, app.O.)). The Commission argues
2 that the MMs defined in the Certification do not include adequate mitigation for impacts
3 to the Delta as a cultural landscape ([Commission, Attachment C](#), p. 2). The Commission
4 argues that the Final EIR analysis “focuses on a limited set of properties, sites, and
5 districts, but fails to adequately assess the cultural values of the Delta in a larger
6 context” ([Commission, Attachment C](#), p. 4).²¹

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

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

²¹ Final EIR Chapter 32 defines a cultural landscape as “‘a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values’ (Birnbaum and Peters 1996:4)” ([DCP.D1.1.00205](#), p.17).

1 resources], fieldwork demonstrated that these islands retained sufficient landscape
2 features for evaluation, and access to each island was readily available”
3 ([DCP.D1.1.00164](#), p. 15).

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

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

37 The Department also refers to DCP MM CUL-1b as equivalent to Delta Plan MM
38 10-1 requirements to avoid and protect cultural landscapes ([DCP.AA1.2.00020](#), p. 39).
39 The Department states “as applicable for cultural landscape historic districts, DCP MM
40 CUL-1b requires preparation of a Landscape Treatment Plan to document the history
41 and significance of the NRHP-eligible landscape identified in the [HRSER] and provide

1 treatment recommendations” ([DCP.AA1.2.00020](#), p. 39).²² The CUL-1b Landscape
2 Treatment Plan will “follow guidance published by the National Park Service (1998) and
3 will serve to document the history and significance of the landscape and provide
4 treatment recommendations that conform with the Secretary of the Interior’s Standards”
5 ([DCP.D1.1.00162](#), p. 47). The Secretary of the Interior’s Standards for the Treatment of
6 Historic Properties, Guidelines for the Treatment of Cultural Landscapes (Secretary’s
7 Standards) generally recommend preservation, rehabilitation, restoration, and
8 reconstruction of cultural landscapes ([DCP.D3.1.04828](#), p. 13). The Department does
9 not list specific strategies to avoid or protect cultural landscapes under DCP MM CUL-
10 1b, but the Secretary’s Standards are generally consistent with Delta Plan MM 10-1(e).

11 For these reasons, the Council finds that evidence in the record supports that the
12 Department will comply with Delta Plan MM 10-1(c) and MM 10-1(d) requirements to
13 survey cultural landscapes prior to construction. Evidence in the record also supports
14 that the Department will develop treatment plans for cultural landscapes consistent with
15 Delta Plan MM 10-1(e). The Commission has failed to show there is not substantial
16 evidence in the record to support the Department’s finding that its MMs are the same
17 as, equal to, or more effective than Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-
18 1(e), concerning cultural landscape investigation, avoidance, and protection.

19 **(b) CRHR and NRHP eligible resources (MM 10-1(d)**
20 **and MM 10-1(e)**

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

31 DCP MM CUL-1a states that the Department will “redesign or modify relevant
32 facilities, construction activities, or both to avoid destruction of or damage to a built-
33 environment historical resource or its setting, to the extent feasible, and if avoidance is
34 not feasible, minimize the destruction or damage to the greatest extent feasible”
35 ([DCP.D1.1.00162](#), p. 45). DCP MM CUL-1b “requires preparation of a built-environment
36 treatment plan (BETP) for each built-environment historical resource affected by the
37 project” ([DCP.AA1.2.00020](#), p. 39). The Department describes: “as appropriate for each
38 individual resource, the BETP will require one or more of the following: building-specific
39 Historic Structure Reports and preconstruction condition assessments; stabilization
40 plans the same as, equal to, or more effective than the [Secretary’s Standards] and

²² The CRHR and NRHP use the same criteria ([DCP.D1.1.00162](#)).

1 National Park Service guidance; redesign of project facilities to avoid destruction or
2 damage to a built-environment historical resource (where feasible); or identification of
3 protective treatment” ([DCP.AA1.2.00020](#), p. 39).

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

16 Furthermore, DCP MM CUL-2 describes future surveying requirements for
17 potentially CRHR- and NRHP-eligible resources: “all surveys must be led or supervised
18 by architectural historians that meet the Secretary of the Department of the Interior’s
19 professional qualification standards. Newly identified resources must be mapped and
20 described on DPR 523-series forms and evaluated for CRHR and NRHP eligibility. The
21 resource evaluations will be summarized in an inventory report and, if applicable, a
22 Landscape Treatment Plan will be prepared” ([DCP.D1.1.00162](#), p. 19-51).

23 For compliance with Delta Plan MM 10-1(e) specifically, the Department points to
24 DCP MM TCR-1a which requires preconstruction identification and avoidance of Tribal
25 archaeological resources and the Tribal Cultural Landscape (“TCL”), in coordination
26 with tribes ([DCP.AA1.2.00020](#), p. 36). Per TCR-1a, the Department will construct the
27 DCP in a manner that avoids physically disturbing character-defining features of the
28 Delta TCL and minimizes physical disturbances to the greatest extent feasible
29 ([DCP.D1.1.00205](#), p. 46). The Department also points to DCP MM TCR-1b, which
30 requires the Department to prepare a “Tribal Cultural Resources Management Plan
31 (TCRMP) to guide continued Tribal consultation and establish project-specific
32 procedures for avoiding, minimizing, and mitigating project impacts on known or
33 potential Tribal cultural resources” ([DCP.AA1.2.00020](#), p. 36). Per TCR-1b, the
34 Department will implement a TCRMP that will include resource-specific treatments to
35 conduct prior and post construction ([DCP.D1.1.00205](#), p. 47). Lastly, the Department
36 points to DCP MM TCR-1c and MM TCR-1d which describe the steps it will take to
37 support Tribal stewardship and access to ceremonial practices ([DCP.AA1.2.00020](#), p.
38 35).

39 For these reasons, the Council finds that evidence in the record supports that the
40 Department will comply with Delta Plan MM 10-1(d) and MM 10-1(e) requirements to
41 investigate and protect CRHR- and NRHP-eligible resources. The Commission has
42 failed to show there is no substantial evidence in the record to support the Department’s

1 finding that the MMs for the DCP are the same as, equal to, or more effective than Delta
2 Plan MM 10-1(d) and MM 10-1(e) regarding CRHR and NRHP eligible resources.

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

6 Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-1(e) require investigation and
7 protection of archaeological, tribal cultural, and landscape resources (Appendix O,
8 [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.16
9 (Cal. Code Regs., tit. 23, app.O.)). The Commission argues that cultural resource
10 mitigations are left up to the National Historic Preservation Act Section 106 process and
11 future funding is not identified ([Commission, Attachment C](#), p. 5). The Commission
12 states: “[The Department] is not proposing defined funding sources for mitigating direct
13 or indirect impacts to cultural resources, leaving final disposition of properties and
14 landscapes potentially eligible for the California and National Registers to the National
15 Historic Preservation Act (NHPA) Section 106 process” ([Commission, Attachment C](#), p.
16 5). The Commission points to the NHPA Section 106 Programmatic Agreement
17 between the US Army Corps of Engineers (USACE), the Department, and the SHPO
18 and suggest it “does not identify any clear standards for future mitigation development”
19 ([DCP.AA5.1.00015](#)) ([Commission, Attachment C](#), p. 5). The Commission argues the
20 Department’s mitigation scheme “without a clear commitment to defined mitigation with
21 identified funding, is simply insufficient to mitigate for the DCP’s extensive and adverse
22 impacts on the Delta cultural landscape” and is “not equally or more effective than Delta
23 Plan MM 10-1(c), (d), and (e)” ([Commission, Attachment C](#), pp. 5-6).

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

36 Regarding funding availability, the Council considers only whether adopted,
37 covered action MMs are consistent with the Delta Plan and whether substantial
38 evidence supports the Department’s findings that each measure is equally or more
39 effective than the applicable Delta Plan MM. In its written submission, the Department
40 notes that the “MMRP is an enforceable condition of project approval” ([DCP.B.1.00001](#),
41 p. 2; [DCP.C.1.00002](#), pp. 1–2, and also Pub. Resources Code, § 30 21081.6(b))
42 (Department, Writ. Sub., p. 130). While the MMRP is an enforceable condition of project

1 approval, the Council does not consider the adequacy, feasibility, or enforcement of
2 mitigation for purposes of CEQA or under Delta Plan policy G P1(b)(2).

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

11 **(d) Coordination with the Commission and local**
12 **community organizations**

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

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

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

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

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

34 Delta Plan MM 10-3 requires certifying agencies for covered actions to inventory
35 and evaluate historic resources and cultural landscapes, avoid historic resources,
36 document resources per Historic American Building Survey/Historic American
37 Engineering Record standards, and comply with other federal standards including
38 Secretary of the Interior guidance (Appendix O, [Delta Plan Ecosystem Amendment
39 Mitigation Monitoring and Reporting Program], pp.18-19 (Cal. Code Regs., tit. 23,

1 app.O.)). The Commission contends that the MMs proposed by the Department are not
2 equal or more effective than Delta Plan MM 10-3.

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

5 Delta Plan MM 10-3(a) requires certifying agencies to inventory and evaluate
6 cultural landscapes, among other resource types, to determine if they are eligible for
7 listing in the CRHR (Appendix O, [Delta Plan Ecosystem Amendment Mitigation
8 Monitoring and Reporting Program], p.18 (Cal. Code Regs., tit. 23, app.O.)). Delta Plan
9 MM 10-3(f) requires compliance with the Secretary of the Interior’s Guidance for the
10 Treatment of Cultural Landscapes (Appendix O, [Delta Plan Ecosystem Amendment
11 Mitigation Monitoring and Reporting Program], p.19 (Cal. Code Regs., tit. 23, app.O.)).
12 The Commission argues that the mitigation measures defined in the Certification do not
13 include adequate mitigation for impacts to the Delta as a cultural landscape
14 (Commission Attachment C p.2). They argue that the Department only surveyed two
15 islands as cultural landscapes, whereas Delta Plan MM 10-3 requires that projects
16 survey and evaluate cultural landscapes for listing in the CRHR (Commission Brief
17 p.16).

18 In its brief, the Commission points to language in the project Final EIR indicating
19 that Bouldin Island and Staten Island were considered potential cultural landscapes and
20 other islands including Mandeville, Venice, Lower Roberts or King “could be evaluated
21 as cultural landscapes...[but] this level of analysis was outside of the scope of this
22 project” ([DCP.D1.1.00164](#) pp.15-16) (Commission Writ. Sub., p.16). The Commission
23 argues the Department did not demonstrate why these areas were not evaluated as
24 cultural landscapes and supply their Draft EIR comments as evidence that this issue
25 was raised with the Department ([DCP.AA5.1.00002](#)) (Commission Brief p.16). The
26 Commission states: “[The Department] has not assessed these areas or provided an
27 explanation for why these areas are not being assessed. Therefore, the record does not
28 provide substantial evidence to support [the Department’s] claim of consistency with G
29 P1(b)(2) as it relates to cultural resources” (Commission Brief p.17).

30 The Commission further argues that the DCP’s MMs should use the “cultural
31 landscape contextual approach,” citing the Secretary of the Interior’s Standards for the
32 Treatment of Historic Properties ([DCP.D3.1.04065](#)) (Commission Attachment C, p. 4).
33 The Standards for the Treatment of Historic Properties includes the Guidelines for the
34 Treatment of Cultural Landscapes (see [DCP.D3.1.04065](#)), which the Commission used
35 in its Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the
36 Delta Conveyance Project Area ([DCP.D3.2.00417](#)).²³

²³ In its written submittal, the Commission points to its comments on the Draft EIR and DEIS suggesting the DCP adhere to National Park Service Standards for the protection of cultural landscapes, which is not in the record (Preservation Brief 36: Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes) (Commission Writ. Sub., p. 17). The Commission notes the

1 consideration by the CRHR and the NRHP (Commission Attachment C p.4). Further
2 evidence is not provided to demonstrate how the project will disqualify resources for
3 consideration by the CRHR and NRHP. For compliance with Delta Plan MM 10-3, the
4 Department refers to DCP MM CUL-1a, CUL-1b, and CUL-2. The Commission suggests
5 that the Department’s measures are noncommittal and only focus on future
6 documentation rather than the requirements of the Delta Plan to implement specific
7 strategies to avoid or protect these resources (Commission Attachment C, p.4).

8 DCP MM CUL-1a states that the Department will “redesign or modify relevant
9 facilities, construction activities, or both to avoid destruction of or damage to a built-
10 environment historical resource or its setting, to the extent feasible, and if avoidance is
11 not feasible, minimize the destruction or damage to the greatest extent feasible”
12 ([DCP.D1.1.00162](#), p.45). DCP MM CUL-1b “requires preparation of a [BETP] for each
13 built-environment historical resource affected by the project” ([DCP.AA1.1.00020](#), p.39).
14 The Department describes: “as appropriate for each individual resource, the BETP will
15 require one or more of the following: building-specific Historic Structure Reports and
16 preconstruction condition assessments; stabilization plans the same as, equal to, or
17 more effective than the Secretary of the Interior’s Standards and National Park Service
18 guidance; redesign of project facilities to avoid destruction or damage to a built-
19 environment historical resource (where feasible); or identification of protective
20 treatment” ([DCP.AA1.1.00020](#) p.39). Under DCP MM CUL-2, the Department will
21 survey and inventory additional areas that were previously inaccessible and ensure that
22 built environment historic resources are identified and BETPs created for each pursuant
23 to DCP MM CUL-1b ([DCP.D1.1.00162](#) p.51). DCP MM CUL-2 describes future
24 surveying requirements for potentially CRHR and NRHP eligible resources: “all surveys
25 must be led or supervised by architectural historians that meet the Secretary of the
26 Department of the Interior’s professional qualification standards. Newly identified
27 resources must be mapped and described on DPR 523-series forms and evaluated for
28 CRHR- and NRHP eligibility. The resource evaluations will be summarized in an
29 inventory report and, if applicable, a Landscape Treatment Plan will be prepared”
30 ([DCP.D1.1.00162](#), p. 19-51).

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

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

39 The Commission argues that cultural resource mitigations are left up to the
40 Section 106 process and future funding is not identified ([Commission, Attachment C](#),
41 p.5). They state: “[The Department] is not proposing defined funding sources for
42 mitigating direct or indirect impacts to cultural resources, leaving final disposition of

1 properties and landscapes potentially eligible for the California and National Registers
2 to the [NHPA] Section 106 process” ([Commission, Attachment C](#), p. 5). The
3 Commission points to the NHPA Section 106 Programmatic Agreement between the
4 [USACE], the Department, and the SHPO and suggest it “does not identify any clear
5 standards for future mitigation development” ([DCP.AA5.1.00015](#)) ([Commission,](#)
6 [Attachment C](#), p. 5). They argue the Department’s mitigation scheme “without a clear
7 commitment to defined mitigation with identified funding, is simply insufficient to mitigate
8 for the DCP’s extensive and adverse impacts on the Delta cultural landscape” and is
9 “not equally or more effective than Delta Plan MM... 10-3(a) and (f)” ([Commission,](#)
10 [Attachment C](#), pp. 5-6).

11 The Department points to DCP MMs CUL-1a, CUL-1b, and CUL-2 as the same
12 as, equal to, or more effective than Delta Plan MM 10-3.²⁴ ([DCP.AA1.2.00020](#), pp. 38-
13 40). Regarding the Section 106 process, the Department states that the USACE is
14 “consulting with the [SHPO], federally recognized Tribes, and other consulting parties to
15 develop a Programmatic Agreement” that will “set forth procedures for identification of
16 historic properties, assessment of effects, and resolution of adverse effects on
17 resources eligible for listing under the NRHP” ([DCP.AA1.1.00020](#), p. 35). The
18 Department notes that mitigation measures described will “fully mitigate the project
19 impacts on cultural and Tribal cultural resources, and therefore mitigation is not
20 dependent on the federal processes” ([DCP.AA1.1.00020](#), p. 35). The Department does
21 not claim that the Section 106 process is a measure the same as, equal to, or more
22 effective than Delta Plan MMs 10-3(a) and 10-3(f).

23 Regarding funding availability, the Council considers only whether adopted,
24 covered action mitigation measures are consistent with the Delta Plan and whether
25 substantial evidence supports the Department’s findings that each measure is equally or
26 more effective than the applicable Delta Plan mitigation measure. The Council does not
27 determine the adequacy, feasibility, or enforcement of mitigation for purposes of CEQA.
28 In the Department’s written submission, it states that the “MMRP is an enforceable
29 condition of project approval” and cites [DCP.B.1.00001](#), p. 2; [DCP.C.1.00002](#), pp. 1–2,
30 and also Pub. Resources Code, § 21081.6, subd. (b) (Department Writ. Sub., p. 130). It
31 is clear that “CEQA imposes several requirements on mitigation measures,” including
32 that they must be fully enforceable through permit conditions, agreements or other
33 legally-binding instruments. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45
34 Cal.App.5th 814, 852-853.) The MMRP is designed to ensure compliance during
35 project implementation. (*Sierra Club v. County of San Deigo* (2014) 231 Cal.App.4th
36 1152, 1165-1166 [MMRP designed to ensure compliance during project
37 implementation.]

38 For these reasons, the Council finds that evidence in the record establishes that
39 the Department does not claim the Section 106 process as a corresponding DCP MM
40 for Delta Plan MMs 10-3(a) and 10-3(f). The Council finds that the Commission has

²⁴ Requirements of these DCP mitigation measures are summarized under Delta Plan MM 10-1 analysis above.

1 failed to meet its burden and that substantial evidence in the record to support the
2 Department’s finding that its MMs are the same as, equal to, or more effective than
3 Delta Plan MM 10-3 regarding this issue.

4 **(d) Coordination with the Commission and local**
5 **community organizations**

6 Regarding Delta Plan MM 10-3, the Commission makes a similar claim to its
7 claim under MM 10-1 that the Department did not initiate meaningful dialogue early on
8 with the Commission and local community organizations about potential mitigation for
9 cultural resources impacts. ([Commission, Attachment C](#), p. 6).

10 Delta Plan MM 10-3 includes requirements related to coordination with
11 architectural historians and the Library of Congress, however there is no requirement
12 specific to coordinating with the Commission and/or local community organizations
13 regarding cultural resources. Therefore, the Commission fails to raise an appealable
14 issue related to the requirements of Delta Plan MM 10-3 on this matter and the issue is
15 not considered further.

16 **(e) Mitigation Measure 10-3 Conclusion**

17 As described above, the Council finds that substantial evidence in the record
18 supports the Department’s compliance with Delta Plan MM 10-3 regarding the surveying
19 of cultural landscapes, avoidance and protection of cultural resources, and investigation
20 and protection of CRHR- and NRHP-eligible resources. For these reasons, the Council
21 finds that the Commission has failed to meet its burden, and that there is substantial
22 evidence in the record to support the Department’s finding that the DCP is consistent
23 with G P1(b)(2) regarding Delta Plan MM 10-3, and the Council ***denies the appeal***.

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

25 Delta Plan MM 18-1 requires projects to be sited in areas that will not impair,
26 degrade, or eliminate recreational facilities and opportunities, where feasible (Appendix
27 O, [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program],
28 p.31 (Cal. Code Regs., tit. 23, app.O.)). If not feasible, MM 18-1 requires projects to be
29 designed such that recreational facilities and access to recreational opportunities will be
30 avoided or minimally affected, and that when project construction is completed, any
31 affected facilities and opportunities be restored to pre-construction conditions. Where
32 impacts are unavoidable, “new permanent or replacement facilities shall be constructed
33 that are similar in type and capacity”, and access restored, if feasible (Appendix O,
34 [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.31
35 (Cal. Code Regs., tit. 23, app.O.)).

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

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

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

Regarding the two sites in question, the Department does not establish MMs specific to the CRP or SLNWR in the G P1(b)(2) crosswalk table ([DCP.AA1.2.00020](#), p. 58) but does include them in their analysis of recreation impacts ([DCP.D1.1.00149](#), [DCP.D1.1.00154](#)). The Department states that “effects on developed and dispersed recreation areas were assessed by identifying recreation use areas that fall within the surface construction footprint and in areas potentially affected by operations to evaluate whether developed and dispersed recreation sites or facilities would be physically altered by construction or affected such that users might be displaced.” ([DCP.D1.1.00149](#), pp. 16-18) The Department includes CRP and Stones Lakes National Wildlife Refuge as the existing developed recreation areas nearest to proposed project features ([DCP.D1.1.00149](#), Table 16-1, Figures 16-1, 16-2). The Department states that construction and permanent use of a haul road for the intakes would be located just outside the western perimeter of SLNWR([DCP.D1.1.00154](#), pp. 17-74). The Department finds that recreation impacts will be minimal because there will be a 12- to 20-foot-high embankment between the refuge and haul route ([DCP.D1.1.00154](#), pp. 17-74). Lastly, the Department’s written submission cites the Final EIR ([DCP.D1.1.00149](#)) analysis on potential impacts to the CRP and its finding that impacts, with ECs and best management practices (EC-18, MMA ES-1a, MM AES-1b, and MM NOI-1), will be less-than-significant.

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

6 **(b) Construction impacts on Turner Cut and Tiki**
7 **Lagoon Resorts**

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

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

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

30 **(c) Mitigation Measure 18-1 Conclusion**

31 As discussed above, the Department identifies the CRP and SLNWR as existing
32 developed recreation areas nearest to proposed project features and finds construction
33 impacts at these sites to be less than significant. The Department mitigates recreation
34 impacts from construction and permanent use of a haul road at the western perimeter of
35 SLNWR with an embankment between the refuge and haul route ([DCP.D1.1.00154](#)).
36 Additionally, the Department provides evidence establishing that impacts to recreational
37 opportunities at Lower Roberts Island, adjacent to Turner Cut and Tiki Lagoon Resorts
38 and Marinas, were considered and mitigated to support their determination that it
39 minimized and mitigated for the effects on recreation. The Council finds that County of

1 Sacramento and the Commission have failed to meet their burden, and that there is
2 substantial evidence in the record to support the Department’s finding that the DCP is
3 consistent with G P1(b)(2) regarding Delta Plan MM 18-1. The Council therefore **denies**
4 **the appeals.**

5 **ix. Delta Plan Mitigation Measure 18-2**

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

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

21 **(a) Temporary and permanent impacts to recreation**
22 **uses**

23 San Joaquin County argues that the Department fails to meet the standards set
24 forth in MM 18-2, stating “there is no analysis in the record of temporary or permanent
25 impacts, because there is virtually no relevant data on both formal and informal
26 recreational uses in the project area.” Appellant then emphasizes that “temporary” is
27 defined as “no longer than 2 years” ([DCP.D1.1.00133](#), pp. 15-26), which is shorter than
28 the expected project construction duration of a decade or more.²⁵

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

²⁵ The Final EIR page that San Joaquin County mentions regarding temporary impacts of two years is related to agriculture, not tourism or recreation ([DCP.D1.1.00133](#)).

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

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

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

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

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

32 **(c) Alternative recreation sites**

33 San Joaquin County argues that the Department fails to meet Delta Plan MM 18-
34 2 requirements to coordinate with and direct impacted recreators to alternative
35 recreation sites (San Joaquin County, Writ. Sub., p. 5), citing the mitigation crosswalk
36 table and Final EIR Chapter 16 ([DCP.AA1.2.00020](#), [DCP.D1.1.00149](#)). Though not
37 included in the crosswalk table or Final EIR Chapter 16, the Department describes EC-
38 16 in the Final EIR, which requires coordination with local stakeholders (e.g., marina
39 operators, city and county parks departments) to provide notification of construction and
40 maintenance activities in waterways and require posting of information for any in-water
41 activities ([DCP.D1.1.00012](#), p. 3B-32) including at Bethany Reservoir ([DCP.D1.1.00154](#),

1 pp. 17-79). The Department also finds that impacts from construction on recreational
2 activities would be minimized with implementation of EC-18, by ensuring community
3 coordination through the Ombudsman to ensure avoidance of community events and
4 festivals; and MM AES-1a, MM TRANS-1, and MM NOI-1 to minimize effects on
5 tourism activities when recreationalists are in close proximity to construction sites
6 ([DCP.D1.1.00154](#), pp. 17-79).

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

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

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

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

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

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

33 The Department contends that MM 20-1 is unnecessary due to project design
34 features and EC-13: Best Management Practices to Reduce GHG Emissions. The
35 Department finds that MM 20-1 is not applicable because the DCP “would not result in a
36 significant impact related to exceeding the capacity of local landfills or causing conflicts
37 with regulations related to solid waste,” that DCP design features and EC-13 are equal
38 to or more effective than MM 20-1, and that the design features and ECs related to
39 construction waste are meant to reduce the use and need for landfills during
40 construction. RTM generated from the DCP will “be reused offsite and not hauled to

1 landfills unless the materials are hazardous” ([DCP.AA1.2.00020](#), p. 64). According to
2 the Department, approximately 1%-5% of the RTM would be unsuitable for reuse and
3 this material would be hauled to a certified landfill for proper disposal ([DCP.D1.1.00172](#),
4 pp. 44-45).

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

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

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

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

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

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

G P1(b)(3) Appeal Issue	Appellants	Decision
Golden mussel proliferation	San Joaquin County	Denied

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

1 **a. Policy Requirements**

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

1 **b. Certification**

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

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

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

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

1 descriptions of how new information relevant to best available science has been or will
2 be addressed with respect to each resource or issue, if it has already become available
3 after the Final EIR was finalized or as it might become available in the future.

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

10 **c. Appeals and Analysis**

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

17 **i. Golden mussel proliferation**

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

²⁶ San Joaquin County cites a paper by Yang 2024 that highlights the impact human activities have on accelerating golden mussel expansion, particularly water diversion projects. San Joaquin County also cites a presentation by Mauro Rebelo from January 2025 about the threat of golden mussels and the ability of artificial substrate to amplify their spread. Neither of these references have been admitted to the record.

1 was finalized, and for *objectivity* because the recognized standards of the scientific
2 method are not met (San Joaquin County Appeal Memo, p. 8).²⁷

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

13 **ii. Climate change modeling**

14 In their appeals on G P1(b)(3), County of Sacramento, Sac Sewer, City of
15 Stockton, and SF Baykeeper argue that the Department failed to use the best available
16 science concerning various aspects of the climate change modeling used to forecast the
17 impacts of DCP operations. (11172025 Sac County Appeal of DCP Cert of Consistency
18 pp. 14-17, 11172025 Sac Sewer Appeal of DCP Cert of Consistency pp. 26-28,
19 11172025 Stockton Appeal of DCP Cert of Consistency pp.10-19). Specific concerns
20 include input data used for modeling([DCP.V2.12.00002](#), pp. 5-6), time periods used for
21 modeling ([DCP.V2.12.00002](#), pp. 10; 12-15; 20-21), the ability of climate models to
22 predict observed conditions ([DCP.V2.32.00020](#); [DCP.V2.32.00021](#); [DCP.V2.32.00023](#);
23 [DCP.V2.32.00026](#)), and accounting for inherent uncertainty (Stockton Appeal of DCP
24 Cert of Consistency pp.28). Appellants make arguments regarding modeling the effects
25 of climate change on the DCP during its operational life; this is directly connected to the
26 Department’s stated purpose of the DCP as a water conveyance project (Sac County
27 Appeal of DCP Cert of Consistency pp. 19-20, Sac Sewer Appeal of DCP Cert of
28 Consistency pp.16-17, Stockton Appeal of DCP Cert of Consistency pp.16;
29 [DCP.V2.12.00002](#), pp. 21; 24; 29; 31)

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

²⁷ San Joaquin County states that the DCP will create “9.5 million square feet of new durable substrates” for golden mussel habitat, citing a Department video from October 23, 2025, after the certification of consistency was submitted.

1 modeling timeframe, although the Department did include 2070 modeling timeframe
2 results in an Appendix to the Final EIR ([DCP.D1.1.00029](#)).

3 The Department also states that new information related to best available
4 science since the Final EIR was completed, as described in G P1 (b)(3) Attachment 1
5 DCP Best Available Science Consistency Analysis ([DCP.AA1.2.00021](#)). Specifically, the
6 Department describes this new information as “both information and data developed or
7 made available between the time of the Final EIR analyses and preparation of this
8 Certification, such as updated modeling with refined project operational criteria using
9 CalSim 3 and DSM2” ([DCP.AA1.2.00001](#), p. 171).

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

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

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

(a) Input data used for modeling

Appellants SF Baykeeper and Sac Sewer claim that the climate and sea level rise data used were based on unrepresentative and 2020 baseline conditions, respectively ([DCP.V2.12.00002](#), pp. 20). Appellants County of Sacramento, Sac Sewer, and City of Stockton claim that the new baseline data chosen by the Department for its modeling does not consider extreme events or changes in evapotranspiration ([DCP.V2.12.00002](#), pp. 24).

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

Other Appellant concerns center around how the Department modeled salinity intrusion in the Delta. Dr. Swanson’s water rights hearing testimony identifies that the Department relied on historical data from a 689-day span between February 10, 2009, and December 31, 2010—a timeframe which included no critically dry years and is therefore considered unrepresentative of future conditions ([DCP.V2.12.00002](#), pp. 20). Appellants argue that the adjusted hydrological baseline did not account for changes in evapotranspiration or for the frequency of extreme events such as drought, atmospheric rivers, and wildfires, all of which influence Delta inflows. Dr. Paulsen’s testimony emphasizes that ignoring shifts in evapotranspiration leaves out a key cause of reservoir decline and surface water loss ([DCP.V2.12.00002](#),

pp.61). Karla Nemeth, Director of the Department, explained at the Council’s hearing on the appeals that warmer temperatures create new demands on water supplies by boosting evaporation and soil absorption; even if precipitation volumes remain steady, Northern California can expect less runoff into rivers, streams, and reservoirs, impacting water available for communities, the economy, and the environment ([DCP.V2.12.00005](#), pp. 40).

However, appellants do not address the specific G P1(b)(3) findings in the Certification with respect to the best available science criteria or the record evidence

1 that supports the findings. (County of Sacramento Appeal, p. 14-20; Sac Sewer,
2 Appeal, p. 10-27, City of Stockton Appeal, pp. 10-19; SF Baykeeper Appeal, pp. 14-20.)

3 In its Certification, the Department provides the following information regarding
4 the selection of hydrologic conditions and sea level rise for input data: “Hydrologic
5 inputs for CalSim 3 have been updated using CMIP6-based datasets, which were
6 developed for modeling purposes in [the Department’s] 2023 SWP Delivery Capability
7 Report and the [Department’s] Climate Action Plan, Phase III: SWP Adaptation
8 Strategy. The revised climate change hydrology incorporated into this modeling utilizes
9 the most current earth system models from the Intergovernmental Panel on Climate
10 Change (“IPCC”), advanced downscaling methods, updated sea level rise projections
11 from the National Oceanic and Atmospheric Administration (“NOAA”) and guidance from
12 the California Ocean Protection Council (“OPC”), enhanced technical tools, and an
13 improved approach to scenario selection and development.” ([DCP.AA1.2.00021](#), p. 4.8).

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

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

(b) Time periods for which modeling was conducted

1
2 Appellants Sacramento County, Sac Sewer, SF Baykeeper, and City of Stockton
3 claim that operations and impacts of the DCP are not presented to describe conditions
4 after 2040 and/or 2070 (Sac County Appeal of DCP Cert of Consistency pp. 38, Sac
5 Sewer Appeal of DCP Cert of Consistency pp. 37, Stockton Appeal of DCP Cert of
6 Consistency pp. 27). Appellants assert that the Final EIR bases its assessments solely
7 on modeling results for the year 2040, without extending analysis to later periods when
8 the DCP will likely be in operation (Sac County Appeal of DCP Cert of Consistency pp.
9 15, Sac Sewer Appeal of DCP Cert of Consistency pp. 11, Stockton Appeal of DCP Cert
10 of Consistency pp. 17). While they acknowledge that the Department did model future
11 conditions for 2070 and incorporated these into some operational and environmental
12 assessments, they argue that additional evaluations—such as water availability studies
13 for other long-term infrastructure projects and benefit-cost analyses for the DCP—were
14 conducted for periods beyond 2070 but were not included in the Final EIR
15 ([DCP.V2.18.00006](#) pp. 17). This omission, according to Appellants, amounts to a failure
16 to fully account for the climate conditions, including sea level rise and saltwater
17 intrusion, that the DCP would encounter throughout its operational life, as highlighted in
18 CPOD water rights hearing testimony from Dr. Swanson ([DCP.V2.18.00006](#)).

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

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

41 The Department prepared a “CalSim 3 Results for 2070 technical memorandum,”
42 a document indicating that these modeling exercises “showed more frequent

1 occurrence of SWP and Central Valley Project (“CVP”) reservoirs at dead storage and
2 additional drawdown of groundwater storage compared to existing conditions and 2040
3 scenarios presented in the DCP EIR” ([\(DCP.V2.18.00006\)](#)).

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

13 As described above, the Department emphasizes modeling as it pertains to the
14 Final EIR in the Certification (e.g., 2040 and 2070) and also cites record evidence for
15 modeling conducted for time periods beyond those cited by the Appellants (e.g., 2023
16 SWP Delivery Capability Report includes modeling outputs for extended time periods
17 (2085)). ([DCP.AA2.1.00103](#)) Thus, the Council finds that Appellants have failed to meet
18 their burden, and that there is substantial evidence in the record to support the
19 Department’s finding that the DCP is consistent with G P1(b)(3) as to issues related to
20 time periods for which modeling was conducted.

21 **(c) Climate models and scenarios used for DCP**
22 **operations**

23 Appellant SF Baykeeper claims that the Department inappropriately used climate
24 scenarios that fail to predict tropical warming patterns to model project operations. (SF
25 Baykeeper Appeal Memo, pp. 17-18; SF Baykeeper Writ. Sub. pp. 18-19) Appellant
26 contends that the climate models used by the Department—specifically CMIP5 and
27 CMIP6—are inadequate for predicting important climate trends affecting California’s
28 water system. (SF Baykeeper Appeal Memo, pp. 17-18; SF Baykeeper Writ. Sub. pp.
29 18-19) Appellant argues these models fail to capture observed patterns of tropical
30 warming in the Pacific Ocean and related changes in atmospheric rivers and the Pacific
31 jet stream, all of which have significant implications for water resources.
32 ([DCP.V2.32.00020](#); [DCP.V2.32.00021](#); [DCP.V2.32.00023](#); [DCP.V2.32.00026](#))
33 Appellant references studies documenting a poleward shift in atmospheric rivers during
34 the Northern Hemisphere’s winter months, pushing these weather systems toward the
35 North Pacific near Alaska and away from California (SF Baykeeper Appeal Memo, pp.
36 17-18). This shift, Appellant asserts, may have contributed to the megadrought
37 experienced in California from 2000 to 2022 by reducing overall precipitation in the
38 state. According to Appellant, the CMIP5 and CMIP6 global climate models relied upon
39 by the Department did not predict these observed trends, raising concerns about the
40 reliability of the modeling approach for forecasting future conditions and impacts on the
41 state’s water supply. ([DCP.V2.32.00026](#).)

1 were identified in the Final EIR ([DCP.AA1.2.00021](#), Section 3.6 – Uncertainty, pp. 3-9 -
2 3-11). Additionally, the Department points to the Compensatory Mitigation Plan and
3 Operations, Adaptive Management, and Monitoring Plan as general evidence
4 supporting how uncertainty is considered throughout the DCP’s lifecycle
5 ([DCP.AA1.2.00021](#), Section 3.18 -- Adaptive Management and Monitoring Program).
6 The Department finds that substantial evidence regarding uncertainty is reflected in the
7 Final EIR’s impact conclusions and in the effectiveness of proposed MMs
8 ([DCP.AA1.2.00021](#), pp. 3-9).

9 Furthermore, the Department generally cites adaptive management as a central
10 process for accounting for uncertainty ([DCP.AA1.2.00021](#), pp. 3-9). The Certification
11 refers to the resources provided in the Final EIR as evidence of uncertainty and points
12 to supporting documentation, including Final EIR Vol 1, Chapter 4, Appendix 30A
13 (CalSim results)([DCP.D1.1.00203](#)), and the 2040 Appendices ([DCP.AA1.2.00021](#), pp.
14 3-10 - 3-11). These references collectively demonstrate the Department’s approach to
15 incorporating and documenting uncertainty within its analyses and project planning.

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

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

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

2 In its appeal, Sac Sewer argues that the Department failed to use best available
3 science to assess groundwater recharge impacts to Harvest Water²⁸ and specifically
4 asserts that this claim is related to the Delta Plan best available science criteria of
5 inclusiveness. Appellant argues that the Department failed to assess changes to
6 groundwater recharge that may impact Harvest Water’s ability to meet its obligation to
7 raise groundwater to “within ten feet below ground surface or shallower within 15 years
8 of the start” of the program ([Sac Sewer, Appeal](#), p. 24). Appellant states that the Delta
9 Groundwater Model (“DeltaGW Model”) used in the Final EIR to describe these impacts
10 does not provide sufficient information to discern how the DCP will affect this
11 groundwater goal ([Sac Sewer, Appeal](#), p. 24).

12 Appellants claim that the Department’s proposed TCC “will utilize an existing
13 farm area within Harvest Water’s service area for a DCP launch shaft, the storage of
14 [RTM], and related construction activities” ([Sac Sewer, Appeal](#), p. 23). Appellants argue
15 that the TCC will affect the Harvest Water service area temporarily during the
16 construction phase and permanently during operations, resulting in a permanently
17 reduced pasture area of 222 acres for irrigated agriculture and a permanent 1,081 acre-
18 foot per year loss in irrigation demand ([Sac Sewer, Appeal](#), pp. 24-25). Furthermore,
19 Appellants argue that the DCP will divert flows from the Sacramento River and act as a
20 barrier to flow between the river and aquifer, which will further reduce recharge to the
21 groundwater system ([Sac Sewer, Appeal](#), pp. 24-25).

22 In the Certification, the Department states that substantial evidence in the record
23 supports its determination that the DCP groundwater analysis is consistent with G
24 P1(b)(3). The DeltaGW Model, an integrated surface water and groundwater model,
25 was the primary tool used in the quantitative groundwater analysis of existing 2020
26 conditions ([DCP.AA1.2.00021](#), p. 14). After evaluating the available options, the
27 Department determined that no readily available groundwater model could be used for
28 groundwater impact analysis of the project and that development of a completely new
29 groundwater model was not feasible within the project schedule ([DCP.AA1.2.00021](#), p.
30 16). Instead, several other options based on updates and revisions to existing models,
31 such as CVHM-D/CVHM or C2VSim-FG, were considered (G P1 (b)(3) Attachment 1, p.
32 17). The DeltaGW Model, a new model based on C2VSim-FG, was developed for the
33 evaluation of groundwater conditions ([DCP.AA1.2.00021](#), p. 17). The Department also
34 notes that while it is theoretically possible that a more sensitive or complex model could

²⁸ Harvest Water is described by Sac Sewer as “a recycled water program that will support agricultural irrigation while creating, protecting and enhancing critical wildlife habitat and contributing to groundwater sustainability efforts by serving as a foundational project and management action to support the Sustainable Groundwater Management Act for the South American and Consumnes groundwater subbasins.” ([Sac Sewer, Appeal](#), p. 18)

1 have been developed, this increased accuracy would not alter the conclusions
2 regarding the environmental impacts ([DCP.AA1.2.00021](#), p. 20).

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

14 **iv. Recreational use methodology**

15 Appellants the Commission and San Joaquin County argue that there is not
16 substantial evidence in the record to support the conclusion that the DCP does not
17 significantly impact recreation. Specifically, Appellants contend that DCP recreational
18 analysis does not meet best available science requirements due to inadequate data
19 collection methods compared to data collected for other resources, and a lack of site-
20 specific and project-specific MMs for recreational impacts. ([Commission, Attachment F](#),
21 p. 1; [San Joaquin County et al., Appeal, BAS Memo](#), p. 8.) Appellants contend that the
22 Certification is not inclusive because it did not incorporate suggestions of the
23 Commission on recreational uses; not timely because the Department did not collect
24 additional data following the COVID-19 pandemic; and not objective, because the
25 Department focused only on roads serving recreational areas. ([San Joaquin County et](#)
26 [al., Appeal, BAS Memo](#), p.10.)

27 The Commission argues that the Department didn't engage enough with
28 recreation providers, especially considering how much recreation means to the Delta's
29 economy and the scale of the DCP. ([Commission, Attachment F](#), p. 2.) The Commission
30 points out that only eight recreation providers were interviewed, none from Contra Costa
31 or Alameda counties, and just one marina operator was included. ([Commission,](#)
32 [Attachment F](#), p. 2.) Additionally, the Commission notes that the field reconnaissance
33 was described as "limited" and done over two days in February. ([Commission,](#)
34 [Attachment F](#), p. 2.) Site-specific DCP features would affect recreational facilities and
35 use areas, including intake structures, geotechnical investigations, the Bethany
36 Complex, RTM areas, shaft sites, levee improvements, access roads, transmission
37 lines, concrete batch plants, fuel stations, and CMP mitigation sites. ([Commission,](#)
38 [Attachment F](#), p. 2.) For instance, long-term levee construction at Lower Roberts Island
39 will impact Turner Cut and Tiki Lagoon Resorts, and Windmill Cove Marina would also
40 face disruptions ([Commission, Attachment F](#), p. 3). The Commission emphasizes that
41 too few recreational interviews were conducted (eight total) and not enough site
42 reconnaissance was performed, with just two days spent across 25 sites.

1 ([DCP.D1.1.00152](#).) The Commission also claims that the Department's reasoning,
2 stating that the COVID-19 pandemic affected their ability to collect additional user
3 observations is speculative and unsupported by data.²⁹([DCP.D1.1.00149](#).)

4 In its Certification, the Department finds that the sources and methods used in
5 the recreation analysis are consistent with best available science. ([DCP.AA1.2.00001](#),
6 p. 169.) The Department's research was "based on site reconnaissance surveys and
7 supplemented with interviews of recreation providers or managers in the recreation
8 business, which provided more information about observed dispersed recreation use
9 patterns in the project area" ([DCP.AA1.2.00001](#), p. 4-55, referencing [DCP.D1.1.00150](#)).
10 The Department selected interviewees "based on the interviewees' area of
11 management responsibility or oversight and knowledge about representative recreation
12 activities, particularly dispersed activity locations that are represented less frequently in
13 existing documentation; recommendations and availability were also factors in the
14 selection. In addition, several interviews with recreation managers were conducted to
15 verify reported trends and obtain more recent site-specific information for some
16 locations that would be proximate to construction activities" ([DCP.AA1.2.00001](#), pp. 4-
17 55, [DCP.D1.1.00151](#)).

18 In its written submission, the Department asserts that "there is no requirement for
19 data collection in each resource area to be as comprehensive as in other resource
20 areas, and certainly not for different covered actions" ([Department, Writ. Sub.](#), p. 104).
21 The Department supports this position with evidence from the Delta Plan: "Best
22 available science is specific to the decision being made and the time frame available for
23 making that decision" ([DCP.AA2.1.00105](#), p. 35). Furthermore, best available science
24 does not obligate a certifying agency to generate new data, and the Appellant does not
25 identify any additional data that it believes [the Department] should have used (San
26 Luis, *supra*, 776 F.3d at p. 995; see also *Clover Valley Found. v. City of Rocklin* (2011)
27 197 Cal.App.4th 200, 245), ["CEQA does not require a lead agency to conduct every
28 recommended test and perform all recommended research to evaluate the impacts of a
29 proposed project. The fact that additional studies might be helpful does not mean that
30 they are required."] ([Department, Writ. Sub.](#), p. 104).

31 GP 1(b)(3) requires covered actions to demonstrate the use of best available
32 science "relevant to the purpose and nature of the project." In this case, the appeal
33 arguments raised by the Commission regarding best available science for recreational
34 impacts do not relate to the nature or purpose of the DCP—that is, to modernize and

²⁹ The written submission concludes by discussing the Council's remand decision for the Lookout Slough Tidal Restoration and Flood Improvement Project, which required the Department to collect more recreational data including recreational vehicle counts from motion-activated cameras over the course of three months. The Commission claims that the Department's "ability to properly gather [best available science] data to assess recreation impacts for another covered action in the same time frame as it was declining to do so for DCP demonstrates that DCP's recreation impacts are not based on [best available science]" (Commission Writ. Sub., p. 20).

1 improve the reliability of SWP water deliveries. Therefore, Council therefore finds that
2 San Joaquin County failed to raise an appealable issue with respect to recreational use
3 under G P1(b)(3).

4 **v. Traffic and transportation analysis**

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

22 The Department replies in its written submittal that the methods and data used to
23 determine transportation impacts through vehicle miles traveled (“VMT”) and roadway
24 LOS analysis are consistent with G P1 (b)(3), stating that “although transportation
25 impacts under CEQA focus on vehicle miles traveled calculations that do not evaluate
26 truck trips for construction, [the Department] conducted additional analysis to consider
27 the effects of construction-related traffic on roadways (including levee roads) and made
28 design decisions to avoid those effects” (Department, Writ. Sub., p. 92). Regarding the
29 intersections included in the analysis, the Department states that “the LOS analysis
30 used hourly roadway traffic volumes from 6:00 a.m. to 7:00 p.m. for 120 roadway
31 segments as well as the AM and PM peak hour turning movement counts for 44 study
32 intersections identified through the scoping process as having the potential to be
33 affected during the construction of the project” ([DCP.AA1.2.00021](#), pp. 4-61). The
34 Department contends it determined the intersections during the NOP scoping process
35 with Caltrans and local city and county agencies ([DCP.AA1.2.00021](#), pp. 4-62).

36 GP 1(b)(3) requires covered actions to demonstrate the use of best available
37 science “relevant to the purpose and nature of the project.” In this case, the appeal
38 arguments raised by the County of Sacramento concerning traffic and transportation do
39 not relate to the nature or purpose of the DCP—that is, to modernize and improve the
40 reliability of SWP water deliveries. Therefore, the Council finds that the County of
41 Sacramento failed to raise an appealable issue with respect to traffic and transport
42 analysis under G P1(b)(3).

1 **vi. Noise analysis**

2 In its appeal, County of Sacramento argues that the Department failed to use
3 best available science to support its findings regarding noise impacts during DCP
4 construction and specifically asserts that this claim is related to the Delta Plan best
5 available science criteria of relevance and inclusiveness. Appellant argues that the
6 Department has not adequately considered several issues: how prolonged construction
7 noise, especially from pile driving, will “transform the soundscape” ([County of
8 Sacramento, Appeal](#), p. 20); the noise level thresholds, with claims that no reduction
9 measures are implemented before these limits are exceeded; whether noise mitigation
10 strategies were assessed to reduce overall noise and vibration; and the potential health
11 risks posed by construction noise and vibrations ([County of Sacramento, Appeal](#), p. 20-
12 21).

13 As described in its best available science consistency analysis, the Department
14 claims there is strong evidence supporting its findings that the DCP noise analysis
15 methods meet the requirements of G P1(b)(3) ([DCP.AA1.2.00021](#), pp. 4-68 – 4-71). The
16 analysis was tailored to the DCP location and considered different sources of noise,
17 including pile driving, traffic, and vibrations from tunnel boring machines. The
18 Department also states that their modeling was conservative, assuming heavy
19 equipment would be used at full capacity, and that further studies are planned to
20 monitor sound levels before construction begins. ([DCP.AA1.2.00021](#), p. 4-69)
21 Regarding how long noise will last and acceptable limits, the Department’s written
22 submission notes that, depending on how close facilities are to sensitive areas, daytime
23 noise could exceed criteria anywhere from one week up to fourteen years, though not
24 continuously. The Department adds that these periods of excessive noise will be
25 nonconsecutive, and with mitigation—if property owners take part in MM NOI-1:
26 Develop and Implement a Noise Control Plan—the impacts can be reduced.
27 (Department, Writ. Sub., p. 90). If a property owner does not elect to participate in the
28 sound insulation program, the impact will remain significant and
29 unavoidable” (Department, Writ. Sub, p. 90). On noise mitigation, the Department says,
30 “these measures include a sound insulation program, implementing best noise control
31 measures, and installing sound barriers at work areas. The sound insulation program
32 (which will offer improvements such as installation of dual pane windows, new or
33 improved exterior doors, and new HVAC systems to impacted property owners) as well
34 as other commitments to affected property owners described in MM NOI-1 that, if
35 accepted, will reduce noise impacts to a less-than-significant level, will begin prior to
36 construction and will be based on updated modeling” (Department, Writ. Sub., pp. 93-
37 94).

38 GP 1(b)(3) requires covered actions to demonstrate the use of best available
39 science “relevant to the purpose and nature of the project.” In this case, the appeal
40 arguments raised by the County of Sacramento concerning noise analysis do not relate
41 to the nature or purpose of the DCP—that is, to modernize and improve the reliability of
42 SWP water deliveries. Therefore, the Council finds that the County of Sacramento failed
43 to raise an appealable issue with respect to noise analysis under G P1(b)(3).

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

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

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

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

36 SF Baykeeper argues that the Department’s water quality analysis overlooks
37 scientific evidence showing that the current Delta flows under D-1641 are not sufficient
38 to protect, enhance, and restore the Delta’s ecosystem. Appellant further asserts that
39 the Department exaggerates its compliance with D-1614 flow requirements by
40 frequently submitting Temporary Urgency Change Petitions (“TUCPs”) when it fails to
41 meet those standards. However, whether D-1641 is adequate for ecosystem protection
42 or whether the Department is adhering to the regulation does not pertain to

1 documenting the best available science in relation to the nature and purpose of this
2 project.

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

10 **viii. Reverse flows**

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

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

37 The Department indicates that the scientific basis for evaluating water quality
38 impacts in the Final EIR was established using proven hydrologic and hydrodynamic
39 models. The Department states that these models have been utilized for decades to
40 assess state and federal water supply projects in the Central Valley and are
41 supplemented by peer-reviewed literature relating to the Delta’s physical and chemical

1 processes, as well as agency-led technical studies ([DCP.AA1.2.00021](#)). As outlined in
2 Section 5.3.2.2 of Final EIR Chapter 5, Surface Water ([DCP.D1.1.00032](#)), the
3 assessment of potential changes in reverse flows incorporated an analysis of the
4 frequency and duration of such events within the Sacramento River. The Department
5 asserts that these findings demonstrated that implementation of the DCP would not
6 produce conditions significantly different from baseline levels. Furthermore, Final EIR
7 Chapter 5 notes that upstream hydrologic changes are more likely attributed to
8 upstream influences. According to the Department, suggestions that a new model run
9 was necessary do not demonstrate that the Certification lacks support from the best
10 available science. Additional information regarding reverse flows is presented in Section
11 3.1.2.2, EchoWater Facilities, which the Department claims further addresses and
12 refutes the claim that DCP operations would increase the occurrence or duration of
13 reverse flow events in the Sacramento River (Department, Writ. Sub., p. 97).

14 In summary, Sac Sewer argues that the Department's DSM2 model runs indicate
15 that reverse flows at Sac Sewer's discharge location will increase in number, duration,
16 and severity because of future climate change, and would likely increase further due to
17 DCP operations. Appellant contends that analysis of reverse flow conditions during DCP
18 operation is insufficient. The Department responds that its modeling shows the
19 frequency of reverse flows may increase slightly, but the impact is neither lengthy nor
20 severe, and that there is no increase in frequency of stronger reverse flows due to
21 project operations. The Department cites evidence that it appropriately used available
22 models and other information. Appellant failed to establish that the evidence could not
23 support the Department's findings with respect to the best available science criteria. For
24 these reasons, the Council finds that Sac Sewer has failed to meet its burden, and that
25 there is substantial evidence in the record to support the Department's finding that the
26 DCP is consistent with G P1(b)(3) regarding analysis of reverse flows.

27 **ix. Residence time and CHAB proliferation**

28 In their appeals, Sac Sewer and City of Stockton argue that the Department
29 incorrectly evaluates water residence time, asserting that the chosen method fails to
30 account for tidal sloshing, relies on arbitrary sub-regions within the Delta which result in
31 unreliable residence time estimates, and does not consider that water may pass through
32 multiple sub-regions.³⁰ They further contend that the approach is inconsistent with the
33 Department's prior evaluations of residence time and underestimates the potential
34 frequency and severity of CHABs ([DCP.V2.12.00002](#), p. 25). Appellants allege that a
35 proper evaluation of water residence time would demonstrate that Delta residence time
36 would increase under both future climate conditions and implementation of the DCP,
37 thereby increasing the potential frequency and severity of CHABs ([DCP.V2.12.00002](#), p.
38 27–28). Appellants also contend that higher water temperatures associated with climate

³⁰ While not stated, this appears to be an allegation of inconsistency with the inclusiveness, relevance, and transparency criteria of best available science.

1 change would further increase the likelihood of CHAB formation ([DCP.V2.12.00002](#), p.
2 25).

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

13 The Department relied on output from DSM2, a calibrated one-dimensional
14 Delta-specific hydrodynamic and water quality model, to assess changes in water
15 temperature, velocity, source water fractions, and residence time associated with
16 project operations ([DCP.D1.1.00033](#), [DCP.D1.1.00065](#)). Residence time was quantified
17 using the DSM2 QUAL module across 12 channel reaches and three open water
18 bodies, including locations known to experience recurring CHAB
19 events ([DCP.D1.1.00064](#), pp. 9-43, 9-124- 9-125). These analyses show that the DCP
20 may result in a small increase in residence times in some open water areas of the
21 central portion of the Delta, in areas that already experience relatively long residence
22 times because use of the north Delta diversions would result in reduced south Delta
23 pumping under a few circumstances (Final EIR, Ch. 9 ([DCP.D1.1.00064](#), p. 9-176)). In
24 the northern, southern, western, or eastern portions of the Delta, residence times would
25 be minimally affected by the DCP relative to existing conditions. Modeled residence
26 time at the Stockton waterfront generally shows a decrease or no change in June
27 through November ([DCP.D1.1.00064](#), p. 9-165). Occasionally, the modeling shows a
28 small increase (i.e., up to 7 hours) in residence time, but never an increase of 10
29 percent or greater. Although a decrease in residence time was modeled at the Stockton
30 waterfront, the Department finds that there is unlikely to be any change in the density or
31 extent of Microcystis and other cyanobacteria at this location because it would not be of
32 sufficient magnitude to change Microcystis dynamics (i.e., growth rates, accumulation,
33 or aggregation) ([DCP.D1.1.00064](#), p. 9-166).

34 The Department acknowledges limitations of DSM2 for modeling residence time
35 in open water bodies, noting that the model assumes uniform mixing and does
36 not represent localized hydrodynamic variability or spatial differences within open water
37 areas. ([DCP.D1.1.00064](#), p. 99) The Department states that, despite these limitations,
38 DSM2 residence time outputs provide a comparative, planning-level indication of
39 whether project operations would increase or decrease residence time under different
40 scenarios, and cites Delta Water Supply Project and Regional Wastewater Control
41 Facility in Sec. 3.1.3.1 (Department Writ. Sub., p. 44) as evidence for appropriately
42 using best available science to assess and analyze the DCP's impact on CHABs, and

1 therefore this represents application of the best available scientific method for CHABs
2 analysis ([DCP.D1.1.00064](#), pp. 99, 167).

3 Additionally, the Department cites the October 2024 publication Cyanobacteria
4 Harmful Algal Bloom Monitoring Strategy for the Sacramento–San Joaquin
5 Delta ([DCP.D3.2.00250](#)), developed by an interagency team, as information relevant to
6 CHAB monitoring and coordination in the Delta. According to the Department, although
7 background information and citations related to CHABs were updated to reflect newer
8 references, the introduction of this information did not result in changes to the CHAB
9 analysis or impact determinations presented in the Final EIR ([DCP.D1.1.00064](#), pp. 92,
10 99, 167). The Department also notes that additional information related to CHABs may
11 be generated through future monitoring and modeling efforts conducted under EC-15
12 and through water quality evaluation studies required by ITP conditions of approval,
13 including studies related to CHABs ([DCP.D1.1.00012](#)).

14 In conclusion, Appellants argue that the Department incorrectly evaluates
15 residence time and underestimates CHAB impacts, and that a correct evaluation would
16 show that Delta residence time would increase under both future climate conditions and
17 the DCP, thereby increasing the potential frequency and severity of CHABs. The
18 Department finds that uncertainty is addressed and that the current scientific
19 understanding of CHABs in the Delta is continually evolving and some uncertainty is
20 unavoidable. This matter reflects a divergence in expert opinion, with deference being
21 afforded to the Department and its determinations under the substantial evidence
22 standard. Moreover, Appellant failed to establish that the record evidence could not
23 support the Department’s findings with respect to the best available science criteria.
24 Therefore, the Council finds that Appellants Sac Sewer and City of Stockton have failed
25 to meet their burden, and that there is substantial evidence in the record to support the
26 Department’s finding that the DCP is consistent with G P1(b)(3) as to issues related to
27 residence time and CHAB proliferation.

28 **x. Seismicity**

29 In their appeals, the Commission, County of Sacramento, Sac Sewer, and City of
30 Stockton argue that the Department failed to document the use the best available
31 science to support its findings regarding seismic risk as it pertains to the DCP, and
32 specifically assert that this claim is related to the Delta Plan best available science
33 criteria of relevance, transparency, and timeliness. They contend that methods
34 documented in the Final EIR do not use best available science, as evidenced in a
35 comment letter by the Delta Independent Science Board (“Delta ISB”), as the Final EIR
36 overstates seismic risks in the Delta ([DCP.AA5.1.00001](#)). A United States Geological
37 Survey (“USGS”) report used in the Final EIR ([DCP.D3.1.00929](#)) relies on a “30-year
38 probability of magnitude 6.7 or greater in the San Francisco Bay Area”
39 ([DCP.AA5.1.00001](#), pp. 6-10) which allegedly amplifies risk in the Delta. Appellants
40 further argue that the Department relies on seismic risk from blind thrusts in the Delta,
41 which are too distant to have an impact. Lastly, Appellants contend that the Department
42 refers to the outdated USGS report in the Final EIR but does not describe how large the

1 earthquakes causing seismic hazards might be, and that “the information in the Final
2 EIR is confusing and not well documented” (Commission, Appeal, p. 7).

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

22 To the matter of timeliness, the Department finds that its seismic data were
23 “sufficient for adequate analyses and applicable to the relevant timeframe”
24 ([DCP.AA1.2.00021](#), p. 4-28). However, “where geotechnical investigation data were
25 limited near the potential intake locations and along the tunnel alignments, geotechnical
26 conditions were extrapolated for the project features in the CER”
27 ([DCP.AA1.2.00021](#), p.4-28). Specifically, “[t]he Seismic Hazards Analyses
28 ([DCP.D3.1.00921](#)) used an updated version of the source model in the DRMS study
29 ([DCP.D3.1.00934](#), [DCP.AA2.10.00030](#)). As appropriate, the geometry of some of the
30 fault sources and other parameters—such as seismogenic crustal thickness and slip
31 rate—were modified from the DRMS model to incorporate new data and interpretations,
32 some of which are included in the more recent Uniform California Earthquake Rupture
33 Forecast 3. In addition, potentially active local faults, such as West Tracy and Midland
34 faults, were characterized and incorporated based on best available fault data
35 developed since the DRMS model. The updated model in the Seismic Hazards
36 Analyses study was used to estimate the maximum considered earthquake for the
37 project facilities.” ([DCP.AA1.2.00021](#), p.4-28).

38 To address the assertion that it failed to meet the inclusiveness criteria of best
39 available science, the Department contends that “the Seismic Hazards Analyses study
40 included site-specific seismic hazard analyses performed at 12 sites along the central
41 and eastern alignments ..., using both probabilistic seismic hazard analyses and
42 deterministic seismic hazard analyses Six of the 12 sites are located along the
43 proposed project alignment, between the intakes and Lower Roberts Island, and

1 a seventh site at the southern edge of the Clifton Court Forebay is approximately 1 mile
2 from the Bethany Complex. The study also incorporated earlier seismic hazard
3 evaluation data from the report prepared for the Seismic Hazard Analyses of the
4 Metropolitan Water District Emergency Freshwater Pathway project, which is
5 also located in the Delta” ([DCP.D3.1.00934](#), [DCP.AA2.10.00030](#)).

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

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

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

26 The Department argues that “substantial evidence in the record supports the
27 determination that the Department implemented fair and consistent procedures
28 regarding Tribal input on Tribal cultural resources that had the potential to be affected
29 by the project” ([DCP.AA1.2.00021](#), p. 5-2). The Department sent project notification
30 letters to 121 Tribes to consult on the project’s environmental review and government-
31 to-government consultation with 13 Tribes that responded to invitations (Final EIR
32 Volume 1, Chapter 32, Tribal Cultural Resources, ([DCP.D1.1.00205](#)) Section 32.1.2.1,
33 Consultation and Engagement with Tribes, and Appendix 32A, Tribal Consultation and
34 Engagement Log ([DCP.D1.1.00206](#))). Then “during CEQA consultation, [the
35 Department] conducted more than 150 government-to-government consultation
36 meetings and facilitated 29 days of Tribal surveys at accessible parcels”
37 ([DCP.AA1.2.00021](#), p. 5-2). The Department’s written submission adds that

³¹ Per the Council’s Draft EIR comments: “the Draft EIR does not report whether Tribes concur with the presentation of impacts to Tribal cultural resources, particularly the decision to recognize and assess impacts to the [TCL]. The [Delta Stewardship] Council defers to Tribes on this matter” ([DCP.D1.1.00241](#), Comment No. 507).

1 consideration of Tribal cultural resources has been conducted since before the 2020
2 NOP ([DCP.E.1.00001](#)). The Department adds that planning for avoidance of these
3 resources is well described ([DCP.X2.1.00017](#)) and that Traditional Knowledge is
4 incorporated as part of the adaptive management process ([DCP.AA1.2.00022](#);
5 [DCP.AA1.2.00023](#); [DCP.AA1.2.00024](#); [DCP.AA1.2.00025](#); [DCP.AA1.2.00026](#)).

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

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

18 In its appeal, San Joaquin County argues that the Department did not address
19 comments from the Delta ISB in its Certification and therefore failed to document use of
20 best available science. Appellant states that the Delta ISB was established in the Delta
21 Reform Act and that “[c]omments, findings, and recommendations from [the Delta ISB]
22 are expected to increase scientific credibility, improve research clarity advance the
23 debate about Delta issues, and seek better connectivity between science, management,
24 and policy.” (San Joaquin County Appeal, p.2) Appellant refers to the Delta ISB’s
25 comments on the Draft EIR regarding methodologies and modeling for climate change,
26 ecology analysis, and impacts to fish and terrestrial species, in addition to other topics.
27 Appellant also states that the Delta ISB found that the Final EIR did not substantially
28 change in response to their comments on the Draft EIR. However, Delta ISB did not
29 address the Department’s specific findings in the Certification concerning the best
30 available science criteria or all the record evidence³²

31 The Department points out that Appellant raises issues related to the Final EIR
32 rather than appealing findings presented in the Certification and disregards the “New
33 Information Relevant to Best Available Science” sections provided in the Certification
34 section on best available science. The Department further finds that “[t]he comments
35 made by the [Delta ISB] on the Final EIR largely were duplicative of comments made by
36 the [Delta ISB] on the Draft EIR that were addressed in the Final EIR in responses to
37 Letter 32 ([DCP.D1.1.00241](#), pp. 1–2), Letter 60 ([DCP.D1.1.00241](#), pp. 2–3), and Letter
38 534 ([DCP.D1.1.00242](#), pp. 1–492). Additionally, [the Department] considered the [Delta

³² The Delta ISB comments preceded the Certification and could not have addressed the Department’s subsequent findings concerning the best available science criteria.

1 ISB’s] Sep. 20, 2024, letter, including the cited references in the letter, while preparing
2 its best available science analysis for G P1(b)(3) Att.1.”

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

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

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

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

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

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

35

1 **a. Policy Requirements**

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

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

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

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

17 **b. Certification**

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

- 26 • a North Delta Diversion Operations Adaptive Management and Monitoring
27 Plan ([DCP.AA1.2.00022](#)),
- 28 • a Compensatory Mitigation Plan Adaptive Management Plan
29 ([DCP.AA1.2.00023](#)),
- 30 • a Habitat Connectivity Adaptive Management Plan ([DCP.AA1.2.00024](#)),
- 31 • a Groundwater Monitoring Adaptive Management Plan
32 ([DCP.AA1.2.00025](#)) and
- 33 • a Sediment Monitoring, Modeling, and Reintroduction Adaptive
34 Management Plan ([DCP.AA1.2.00026](#)).

35 Regarding documentation of adequate resources for adaptive management, the
36 Certification states that “since its inception, the SWP is required by law to collect
37 revenue sufficient to reimburse the Department for all costs incurred in the construction,
38 maintenance, and operation of the SWP” (Wat. Code § 11455, [DCP.AA1.2.00001](#), p.
39 186). The Department states that this provision applies to both new and existing SWP

1 facilities, including the costs of constructing, operating, and maintaining the DCP and its
2 mitigation efforts ([DCP.AA1.2.00001](#), p. 186). Furthermore, the Certification states that
3 the Department cannot start building a new Delta conveyance facility until arrangements
4 are made with participating contractors to cover the "cost of environmental review,
5 planning, design, construction, and mitigation" needed for its construction, operation,
6 and maintenance. (Wat. Code sec. 85089) and that the Department has had long-term
7 water supply contracts with the 29 SWP contractors since the early 1960s, and no
8 contractor has defaulted on payments ([DCP.AA1.2.00001](#), p. 187). The Certification
9 concludes that this track record and a legal requirement of the SWP contractors to levy
10 a tax if necessary to meet the payment obligations to the Department (Wat. Code sect.
11 11652) demonstrates that adequate funding will be available to meet the obligations set
12 by G P1(b)(4) ([DCP.AA1.2.00001](#), p. 187).

13 The Certification states that the Department has complete authority over the
14 construction, operation, and maintenance of the SWP, including the collection of all
15 related revenue (Wat. Code 11451). Under statutory authority and the California Water
16 Resilience Portfolio per Governor Newsom's Executive Order N-10-19, the Department
17 certified the Final EIR, which encompasses adaptive management, MMs, and ECs. As a
18 result, the Department is authorized and required to implement the adaptive
19 management plans in accordance with the Final EIR and MMRP. ([DCP.AA1.2.00001](#), p.
20 187).

21 **c. Appeals and Analysis**

22 San Joaquin County challenges the Department's Certification regarding GP
23 1(b)(4), claiming that the Department's assertions of access to adequate funding for
24 adaptive management are not supported by substantial evidence. At the time of the
25 appeal (November 18, 2025), Appellant argues that the Department's authority to issue
26 bond funding for the DCP is currently in litigation, that a funding source for the DCP has
27 not yet been approved by the Department, and that the State Water Contractors have
28 not agreed to pay for construction of the DCP. The Third Appellate District Court
29 published a decision on December 31, 2025 (*Dept. of Water Resources v. Metropolitan*
30 *Water District of Southern California* (2025) 117 Cal.App.5th 751), which is referenced
31 in the written submittal from San Joaquin County. Appellant states that the appellate
32 court "rejected [the Department's] 2020 attempt to obtain authority to issue bonds to
33 fund planning and construction of the Delta Tunnel" (San Joaquin County, Writ. Sub., p.
34 7).

35 Appellant further asserts that the Department does not have the authority to
36 issue bonds for SWP modifications, as evidenced by the omission of language explicitly
37 including the DCP in California's May 2025-2026 budget revision (San Joaquin County,
38 Writ. Sub., p. 8). Additionally, the Appellant contends that the Department's current cost
39 estimate for the DCP is much lower than the actual expected expense (San Joaquin
40 County, Appeal Form, p. 4; San Joaquin County, Writ. Sub., pp. 8-9). According to the
41 Appellant, independent cost benchmarking indicates that the true cost of the DCP will
42 likely fall between \$27 and \$33 billion ([DCP.V2.7.00015](#), pp. 3-4). The Appellant also

1 claims that the Department lacks both a Financial Plan and a Feasibility Assessment for
 2 the DCP (San Joaquin County, Appeal Form, p. 4) and states that the Department
 3 "must provide a good faith estimate of the cost of adaptive management and
 4 documentation of adequate funding to comply with this regulatory policy" (San Joaquin
 5 County, Writ. Sub., p. 9). The Appellant goes on to argue that the Department's finding
 6 of consistency is unsupported by substantial evidence, noting that it "has provided no
 7 information regarding the estimated cost of adaptive management or the sources of
 8 funding that would demonstrate documentation of access to adequate resources." (San
 9 Joaquin County, Writ. Sub., p. 9)

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

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

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

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

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

WR P1 Appeal Issue	Appellants	Finding/Decision
Compliance with WR P1 subsection (a)(1)	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin County	One or more water suppliers that would receive water from the DCP failed to adequately contribute to reduced

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

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a. Policy Requirements

WR P1 states:

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

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

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

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

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action to export water from, transfer water

1 through, or use water in the Delta, but does not cover any such action unless one or
2 more water suppliers³³ would receive water as a result of the proposed action.

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

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

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

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

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

26 **b. Certification**

27 In the Certification, the Department determines that the DCP is consistent with
28 WR P1.³⁴ ([DCP.AA1.2.00001](#), p. 44.) The Certification states that the SWP contractors
29 are the “water suppliers” for the DCP. (Id., p. 53.) Nonetheless, the Department
30 “exercised its discretion” to identify 274 potential south of Delta water suppliers that

³³ “Water supplier” is defined in the Council’s regulations to include “urban water suppliers” and “agricultural water suppliers”. (Cal. Code Regs., tit. 23, § 5001, subds. (aaa), (yy), (c).) Both urban and agricultural water suppliers are defined to distribute a minimum amount of water to end users, irrigated acres, or for municipal purposes, respectively. (See Cal. Code Regs., tit. 23, § 5001, subds. (yy), (c).)

³⁴ The Department defines the Covered Action as “the construction, operation, and maintenance of new SWP water diversion and conveyance facilities in the Delta that would be operated in coordination with existing SWP facilities.”

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

11 With respect to WR P1 subdivision (a)(2), the Certification finds that the potential
12 failure of some water suppliers to demonstrate reduced reliance in the manner set forth
13 in WR P1 subsection (c)(1) has not significantly caused the need for the DCP and
14 therefore subsection (a)(2) does not apply. (Id., p. 68.) Specifically, the Department
15 states that “the [DCP] is needed to protect against future water supply losses caused by
16 climate change–driven weather extremes, sea level rise, and earthquakes, and
17 compared to the demonstrated reduced reliance and improved regional self-reliance,
18 even the theoretical maximum failure to reduce reliance is not significant.” (Id., p. 70;
19 see also WR P1 attachment 2 – [DCP.AA1.2.00010](#).) According to the Certification, a
20 conservative estimate of the maximum potential failure to demonstrate reduced reliance
21 totaled 40,198 acre-feet³⁵ of water, which constitutes approximately 1% of the total
22 SWP contract amounts evaluated (3.99 million acre-feet). (Id., p. 69.) In addition, the
23 Certification explains that the regional-level analysis shows a total of 520,000 acre-feet
24 of reduced reliance in 2030 plus 1.2 million acre-feet of improved regional self-reliance
25 for a total 1.7 million acre-feet of regional-level reduced reliance on the Delta. (Ibid.)
26 Therefore, the Certification finds that the Covered Action is consistent with WR P1. (Id.,
27 p. 71.)

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

31 **c. Appeals and Analysis**

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

³⁵ The 40,198 acre-feet reflects the total maximum amount of water supplies that the eight water suppliers could receive through the SWP.

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

2 For WR P1, subsection (a)(1) to apply, “[o]ne or more water suppliers that would
3 receive water as a result of the export, transfer, or use must have failed to adequately
4 contribute to reduced reliance on the Delta and improved regional self-reliance
5 consistent with all of the requirements listed in paragraph (1) of subsection (c).” (Cal.
6 Code Regs., tit. 23, § 5003, subd. (a)(1)). To show an adequate contribution to reduced
7 reliance, a certification of consistency must comply with the requirements set forth in
8 subsection (c)(1). Thus, a water supplier must complete an urban or agricultural water
9 management plan that includes the expected outcome for measurable reduction in
10 Delta reliance and improvement in regional self-reliance. (Cal. Code Regs., tit. 23, §
11 5003, subds. (c)(1)(A) and (C).) This expected outcome should be reported as the
12 reduction in the amount of water used, or in the percentage of water used, from the
13 Delta watershed. (Cal. Code Regs., tit. 23, § 5003, subd. (c)(1)(C).)

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

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

36 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,
37 SDWA, and San Joaquin County claim that the effect of water suppliers' failure to
38 demonstrate reduced reliance on the Delta is understated, because under WR P1,
39 reduced reliance and improved regional self-reliance are independent and distinct
40 requirements, and both must be satisfied by every water supplier receiving water from
41 the DCP. Furthermore, Appellants claim that the Department did not demonstrate that
42 water suppliers commenced implementation of every program included in water

1 management plans that were locally cost-effective and technically feasible, as required
2 by WR P1. Appellants argue that the Department’s additional diversion from the Delta
3 does not decrease reliance and is inconsistent with the Delta Plan and Policy WR P1
4 ([County of Sacramento, Appeal](#), pp. 30- 37; [SF Baykeeper, Appeal](#), pp. 4-8; [Sac Sewer,](#)
5 [Appeal](#), pp. 30-37. City of Stockton, Appeal, pp. 19-26, [SDWA, Appeal](#), pp. 5-10, San
6 Joaquin County, Appeal, [DCP.AA1.2.00009](#), pp. 2-8).

7 WR P1 subsection (c)(1)(C) states “The expected outcome for measurable
8 reduction in Delta reliance and improvement in regional self-reliance shall be reported in
9 the Plan as the reduction in the amount of water used, or in the percentage of water
10 used, from the Delta watershed.” WR P1 does not require a net reduction in Delta
11 exports. Water suppliers can show reduced reliance on the Delta through a reduction in
12 the percentage of water used from the Delta watershed. (Ibid.) An increase in exports
13 therefore does not necessarily indicate an increased reliance on the Delta where there
14 is an accompanying decrease in the percentage of total Delta water supplies used.
15 (See Wat. Code § 85021.) In any event, there is no evidence in the record that there
16 will be a new or increased export beyond the contract amounts for the SWP through the
17 DCP.³⁶

18 To the extent that Appellants claim that reduced reliance and improved regional
19 self-reliance are independent and distinct requirements under WR P1, that is not
20 accurate. (See 23 Cal. Code Regs., 23 § 5003, subd. (c)(1)(3)). Rather for the purpose
21 of WR P1, a water management plan should reflect the expected outcome for
22 measurable reduction in Delta reliance *and* improvement in regional self-reliance as
23 either: 1) the reduction in the amount of water used from the Delta watershed, or 2) the
24 percentage of water used from the Delta watershed. (Ibid.) WR P1 does not require a
25 separate reporting metric for improved regional self-reliance. (Ibid.) Of course, to report
26 a reduction of water used from the Delta watershed a water supplier must be able to
27 quantify that amount. As the Department explains, that quantification is not feasible for
28 lower-level suppliers for various reasons. (See e.g. [DCP.AA2.3.00419](#), pp. 7-8 “Yorba
29 Linda Water District, Appendix J: Reduced Delta Reliance Reporting – Addendum to
30 2015 UWMP.”)

31 Here, 63 of the 257 suppliers evaluated by the Department demonstrated
32 reduced Delta reliance in the manner set forth in WR P1 (c)(1). ([DCP.AA1.2.00001](#), p.
33 71). For example, water supplier Metropolitan Water District showed a year 2010
34 baseline quantity of Delta water supplies of 1,492,000 acre-feet of water.
35 ([DCP.AA1.2.00009](#), Table A-21, p. 49.) That quantity of Delta water supplies is
36 projected to decrease to 1,182,000 acre-feet by the year 2030. (Ibid.) From 2010 to
37 2030, the amount of Delta water supplies as a percentage of the total water demand
38 would decrease from 27% to 24%. (Ibid.)

³⁶ A future increase in the amount of water transferred beyond that covered by existing SWP contracts would be a potential new transfer requiring its own certification of consistency as a covered action.

1 An additional 186 of the 257 water suppliers demonstrated increased regional
2 self-reliance, but not in a manner that quantified a reduction in the amount of water used
3 from the Delta watershed as required by WR P1 subsection (c)(1)(C). (See
4 [DCP.AA1.2.00009](#), Table A2-4, p. 52.) These 186 water suppliers reported: 1) the total
5 quantity of water supplies contributing to regional self-reliance as a specific acre-feet
6 amount; and 2) the water supplies contributing to regional self-reliance as a percent of
7 total demand. (Ibid.) As an example, the City of Anaheim reported a 2010 baseline
8 quantity of 47,934 acre-feet of water contributing to regional self-reliance that is
9 projected to increase to 71,919 acre-feet by 2030. (Ibid.) As a percentage of total
10 demand, Anaheim’s water supply from regional self-reliance is 65% for the 2010
11 baseline, increasing to 87% by 2030. (Ibid.)

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

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

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

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

30 In its Certification, the Department finds that the water suppliers’ failure did not
31 cause the need for the Covered Action ([DCP.AA1.2.00001](#), p. 71). Rather, the
32 Certification states that “[the Department] ... approved the [DCP] to address the
33 reduced reliability of SWP exports caused by the increasingly restrictive operational
34 criteria imposed on the operations of existing infrastructure, and to address multiple
35 risks to reliable, high- quality water supplies presented by subsidence, seismic risks,
36 climate change, and sea level rise.” ([DCP.AA1.2.00001](#), p. 70) In effect, the Department
37 points to a longstanding and statutorily recognized need for new and improved
38 infrastructure including “Delta conveyance facilities.” (Id. at p.28-29, Wat. Code, §
39 85004(b)). To support its finding, the Department includes an analysis titled “Project
40 Need and Historical Background” and cites numerous documents as supporting
41 evidence. (See [DCP.AA1.2.00010](#), pp. 40-46.)

1 The Department further finds that the failure of eight water suppliers to
2 demonstrate reduced reliance (described above under subsection (a)(1)) has not
3 significantly caused the need for the DCP. The Department conservatively estimates
4 that the maximum potential failure to demonstrate reduced reliance for the eight subject
5 suppliers is 40,198 acre-feet ([DCP.AA1.2.00001](#), p. 69), which it finds is insignificant in
6 comparison to the 3.99 million acre-feet of total SWP water supplies, and compared to
7 the regional totals of reduced Delta reliance and improved regional self-reliance
8 (estimated to be 1.7 million acre-feet), and therefore the failure of the eight water
9 suppliers does not significantly cause the need for the DCP ([DCP.AA1.2.00001](#), p. 46).
10 The Department’s quantitative estimates are based on evidence in the record.
11 ([DCP.AA1.2.00001](#), pp. 45, 65-106; [DCP.AA2.3.00001](#).)

12 County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, and
13 San Joaquin County challenge these findings. Appellants claim: 1) that the record
14 shows that 194 water suppliers (over 75% of the 257 water suppliers) failed to
15 demonstrate reduced reliance; 2) that the need for the DCP is overstated,³⁷ and 3) that
16 the Department incorrectly concludes that the failure to decrease demand on the Delta
17 has not significantly caused the need for the DCP ([DCP.AA1.2.00001](#), p. 71).³⁸

18 Appellants focus their various arguments on the premise that the Department
19 failed to correctly calculate the number of water suppliers that failed to meet the
20 reporting requirements of WR P1 subsection (a)(1). However, the technical failure of a
21 water supplier to quantify a specific reduction of Delta water supply in an urban water
22 management plan does not automatically establish that the water supplier caused the
23 need for this Covered Action. There must be evidence in the record that the water
24 supplier’s failure to show reduced Delta reliance significantly caused the need for the
25 export or transfer at issue in the Covered Action. Here, appellants entirely fail to
26 connect the need for the DCP to the failure of any of the 186 water suppliers to quantify
27 a reduction in Delta water supplies. For example, there is no evidence to establish that:
28 1) the DCP will export a specific amount of water through the Delta to the City of
29 Anaheim (one of the 186 water suppliers that only showed improved regional self-
30 reliance), and 2) the DCP’s export of water is necessary because of the City of

³⁷ Appellants argue that the Department did not accurately address climate change, overstated the seismic risk, and overestimated population growth ([DCP.AA5.1.00001](#), pp. 4-5, [DCP.V2.9.00004](#) p.14, [DCP.V2.7.00001](#)). These arguments do not address the evidence in the record that the Department cited or establish that one or more water suppliers’ failure to reduce reliance on the Delta and improve regional self-reliance “significantly caused” the need for the Covered Action.

³⁸ Appellants also argue that the conditions of WR P1 subsection (a)(2) are met because the Department’s alleged additional diversions from the Delta would not reduce reliance and is inconsistent with the Delta Plan Policy WR P1. For WR P1(a)(2) to apply, Appellants must identify an appealable issue and cite evidence demonstrating that specific water suppliers’ failure to reduce reliance on the Delta and improve regional self-reliance “significantly caused” the need for the Covered Action.

1 Anaheim’s failure to quantify reduced Delta reliance. In fact, the record shows a steady
2 increase in City of Anaheim’s regional water supplies as a percentage of total service
3 area water demands, with a corresponding decrease in imported water.
4 ([DCP.AA2.3.00053](#), Appendix K, pp. 255-276.) Whether the City of Anaheim’s water is
5 sourced from Colorado River supplies or the SWP, the City’s total amount of imported
6 water is projected to be reduced in 2030 by 11,264 acre-feet (from 65% to 87% of total
7 demand).³⁹ ([DCP.AA2.3.00053](#), Figure 6-1, p. 49.) This evidence undermines the
8 claim that the failure to report a specific reduction in Delta water supplies necessarily
9 means that the water supplier significantly caused the need for the Covered Action.

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

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

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

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

³⁹ City of Anaheim’s 2020 Urban Water Management Plan explains that it is infeasible to account for specific supplies from the Delta watershed because it receives imported water from both the State Water Project and Colorado River Aqueduct through Metropolitan Water District. ([DCP.AA2.3.00053](#), p. 269.)

1 Appellants' claims in this regard. Accordingly, the Department concedes that subdivision
 2 (a)(3) applies.

3 **d. WR P1 Conclusion**

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

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

11 The Department certifies that the DCP is consistent with Delta Plan Policy ER
 12 P1. Seven Appellants raise substantive arguments that it is not. For the reasons
 13 discussed below, the Council finds that Appellants have failed to meet their burden, and
 14 that there is substantial evidence in the record to support the Department's finding that
 15 the DCP is consistent with ER P1. Accordingly, the Council **denies the appeals** as
 16 follows:

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

17

1 **a. Policy Requirements**

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

5 “(a) The State Water Resources Control Board's Bay Delta Water Quality
6 Control Plan flow objectives shall be used to determine consistency with the
7 Delta Plan. If and when the flow objectives are revised by the State Water
8 Resources Control Board, the revised flow objectives shall be used to determine
9 consistency with the Delta Plan.

10 (b) For purposes of Water Code section 85057.5(a)(3) and section
11 5001(o)(1)(E) of this Chapter, the policy set forth in subsection (a) covers a
12 proposed action that could significantly affect flow in the Delta.”

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

17 **b. Certification**

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

28 The Department also states that the SWP has historically met D-1641 flow
29 objectives 99.8 percent of the time, and that modeling shows that adding the DCP will
30 not hinder the SWP’s ability to meet D-1641 flow objectives. ([DCP.AA1.2.00001](#), p. 116)
31 The Department states that it does not operate under Temporary Urgency Change
32 Orders (“TUCOs”)⁴⁰ as part of normal operations of the SWP and does not anticipate
33 that operations of the DCP will lead to an increase in frequency of TUCOs issued by the
34 SWRCB.

35 Finally, the Department states that when and if the Bay-Delta Plan is revised, the
36 SWP and the DCP are legally obligated to comply with any revised flow objectives

⁴⁰ Appellants refer to Temporary Urgency Change Orders as Temporary Urgency Change Petitions, or TUCPs.

1 properly assigned to it, and the SWP will be operated to do so. (Certification,
2 [DCP.AA1.2.00001](#), p. 120) The Department includes evidence in the record showing
3 that it has submitted a Petition for a CPOD for the DCP to the SWRCB. (See
4 [DCP.V1.1.00001](#) – [DCP.V1.2.00343](#).) The CPOD does not seek modifications to the
5 requirements of D-1641 and states that the DCP will meet D-1641 requirements.
6 ([DCP.V1.1.00001](#), pp. 13, 15.)

7 **c. Appeals and Analysis**

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

16 **i. Inadequate flow modeling**

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

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

1 Appellant San Joaquin County claims that the Department’s modeling obscures
2 chronic future noncompliance with D-1641 as demonstrated in CalSim 3 evaluations of
3 2070 conditions” ([DCP.V2.12.00002](#), pp. 10-11), that modeling data based on averages
4 obscures the significance of non-compliance with Delta flows ([DCP.V2.12.00002](#), pp.
5 30-31), and that the sea-level rise increases assumed by the Department to occur due
6 to climate change would also require several million-acre feet of additional Delta inflow
7 to achieve D-1641 compliance. ([DCP.V2.12.00002](#), p.12).

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

15 In its written submission, the Department holds that TUCOs do not violate
16 conditions in a water right holder’s underlying permit or license, nor are TUCOs included
17 in proposed operations of the project (Department, Writ. Sub., p.138); that its modeling
18 approach is supported by the best available science (Department, Writ. Sub.); and that
19 ER P1 does not require modeling of future climate conditions. (Department, Writ. Sub.,
20 p.138).

21 Appellants’ criticism of the Department’s modeling approach does not establish
22 that the Department’s methodology was unsupported by substantial evidence. (See
23 *South of Market Community Action Network v. City and County of San Francisco* (2010)
24 92 Cal.App.5th 474, 493.) ER P1 does not require modeling to address future climate
25 conditions. Indeed, such modeling is of uncertain value given that the SWRCB Bay-
26 Delta Plan has not been fully updated and flow criteria may adjusted be pursuant to
27 Water Code § 85086, subd. (c)(2).) The Council reviews whether there is substantial
28 evidence to support the Department’s findings of consistency with the applicable
29 standard in effect at the time the certification is submitted. To the extent appellants raise
30 potential concerns of best available science, those concerns are addressed under G
31 P1(b)(3). They are not additional appealable issues under ER P1.

32 **ii. Temporary Urgency Change Orders**

33 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,
34 SDWA, and San Joaquin County argue that the issuance of a TUCO is evidence of non-
35 compliance with D-1641. Appellants assert that the standard for consistency with ER P1
36 “is compliance with the flow objectives established in the Bay-Delta Water Quality
37 Control Plan” and that “the standard is not compliance with the terms and conditions of
38 a given water right.” Further, Appellants County of Sacramento, Sac Sewer, and City of
39 Stockton state that the Department is incorrect in “concluding that the issuance of a
40 TUCO is not proof of inconsistency with D-1641 flow objectives” and that a TUCO does

1 not “temporarily modify D-1641 requirements” (Detailed Findings, p. 99; see also Wat.
2 Code, § 1435, subd. (a).).

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

7 Appellant SDWA also argues that the Certification does not describe how the
8 Department intends to operate the DCP to address sea level rise, levee failures, and
9 drought conditions. Because of this, there is no substantial evidence demonstrating how
10 the DCP’s operations will comply with the flow-dependent objectives of D-1641
11 ([DCP.D1.1.00009](#)). SDWA also argues that the Certification lacks substantial evidence
12 demonstrating that the operations of the DCP will not increase the need for TUCOs or
13 accelerate the need for such changes.

14 The Department finds that “modeling of covered action operations shows that the
15 SWP with the covered action and operated under the project’s operational criteria will
16 meet D-1641 flow objectives” ([DCP.AA1.2.00001](#), p. 99). The Department also finds
17 that the SWP has “historically met D-1641 flow objectives 99.8% of the time, and the
18 modeling shows that adding the covered action will not hinder the SWP’s ability to meet
19 D-1641 flow objectives” ([DCP.AA1.2.00001](#), p. 98).

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

28

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

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

36 The Department has a pending petition before the SWRCB for a Change in Point
37 of Diversion (“CPOD”). The petition seeks to add two points of diversion and re-
38 diversion to the water rights for the SWP, and is a required step in the Department’s
39 permit approvals for the DCP. ([DCP.V1.1.00001](#), p. 1) County of Sacramento, Sac

1 Sewer, City of Stockton, and San Joaquin County claim that the process to add points
2 of diversion and re-diversion for the SWP is not completed, that any associated new
3 conditions or permitted total diversion capacity are unknown, and that as a result, the
4 Department lacks evidence to show consistency with ER P1. Appellants assert that,
5 absent this information, the Department cannot accurately model how the Covered
6 Action would operate or how compliance with Delta flow objectives would be achieved,
7 noting that the proceeding at the SWRCB to consider the Department’s CPOD Petition
8 is ongoing, and that the administrative hearing officer for the SWRCB has requested
9 additional modeling from the Department to demonstrate compliance with the Delta flow
10 objectives currently under consideration by the SWRCB. ([DCP.V3.1.00042](#), p. 2, citing
11 Wat. Code, § 85086.)

12 The Department states that "modeling of covered action operations shows that
13 the SWP with the covered action and operated under the project’s operational criteria
14 will meet the D-1641 flow objectives" and that "when and if the Bay-Delta WQCP is
15 revised, the SWP and the covered action are legally obligated to comply with any
16 revised flow objectives properly assigned to it, and the SWP will be operated to do so."
17 (Certification, p. 120 [\[DCP.AA1.2.00001\]](#), pp. 120]. During the Hearing, the Department
18 acknowledged that it has a pending CPOD petition in before the SWRCB ("CPOD
19 petition", [DCP.V1.1.00001](#)).

20 In its written submittal, the Department explains that "implementation of the DCP
21 requires the [SWRCB] to approve [the Department]’s CPOD petition. The [SWRCB], in
22 considering whether to grant the petition, must determine that the project is consistent
23 with D-1641 for the Bay-Delta WQCP. The ongoing CPOD hearing process, by itself,
24 constitutes substantial evidence that the DCP will not be implemented unless it is
25 consistent with the flow objectives as required by ER P1." ([DCP.AA1.2.00021](#), p. 142)

26 To demonstrate consistency with ER P1, a certification of consistency must be
27 supported by substantial evidence that demonstrates that the Covered Action can
28 comply with flow objectives in effect at the time that the certification is submitted: D-
29 1641. The best practice for establishing consistency with ER P1 is securing an
30 order/approval from the SWRCB prior to submitting a certification of consistency.
31 However, if the SWRCB’s jurisdiction is invoked because a petition has been filed to
32 change the conditions of a water rights permit (such as a CPOD) and that petition
33 concerns compliance with Bay-Delta Plan flow objectives, the Council lacks the
34 authority to review the sufficiency of the SWRCB’s order or separately determine
35 *compliance* (as opposed to evidence of consistency) with Bay-Delta Plan flow
36 objectives. Furthermore, the Department cannot commence construction "of any
37 diversion, conveyance, or other facility necessary to divert and convey water pursuant
38 to the change in point of diversion until the [SWRQB] issues an order approving a
39 change in the point of diversion." (Wat. Code, § 85088.)

40 The Council therefore agrees with the Department. Although it is the best
41 practice for a public agency to secure approval from the SWRCB prior to submitting a
42 certification of consistency because the issue of consistency with the Bay-Delta Plan’s

1 flow objectives would be conclusively resolved, pre-approval is not required by ER P1.⁴¹
2 (Cal. Code Regs., tit. 23, § 5005.) Here, the SWRCB’s jurisdiction was invoked prior to
3 the Certification because the CPOD petition was duly submitted and that petition
4 asserts compliance with Bay-Delta Plan flow objectives. Moreover, the Delta Reform Act
5 provides that the Department cannot commence construction “of any diversion,
6 conveyance, or other facility necessary to divert and convey water pursuant to the
7 change in point of diversion until the [SWRCB] issues an order approving a change in
8 the point of diversion.” (Wat. Code, § 85088.) Accordingly, it is the SWRCB and not the
9 Council that is statutorily required to resolve the question of the DCP’s substantive
10 compliance with Bay-Delta Plan flow objectives. Rather, the Council’s task is to
11 determine whether substantial evidence supports the Department’s finding of
12 *consistency* with existing flow objectives. The pending CPOD petition,⁴² the requirement
13 of Water Code § 85088, the record evidence, including the modeling and historical
14 data, establish that the DCP will be consistent with existing Delta flow objectives. The
15 DCP cannot do otherwise.

16 For these reasons, the Council finds that Appellants have failed to meet their
17 burden, and that there is substantial evidence in the record to support the Department’s
18 finding that the DCP is consistent with ER P1. Should the SWRCB require physical
19 changes to the DCP as defined for purposes of this Covered Action as a condition of its
20 CPOD determination, the Department may be required to submit a certification of
21 consistency with the Delta Plan to the Council concerning the changes.

22 **iv. ER P1 requires compliance with salinity-based, flow-**
23 **dependent objectives**

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

32 SDWA argues that there is no substantial evidence that the DCP will be operated
33 to comply with all flow-dependent objectives in D-1641. SDWA points to the Bay-Delta
34 Water Quality Control Plan (Bay-Delta Plan), Delta Plan and Council documents to
35 demonstrate that ER P1 requires compliance with all flow-dependent objectives in

⁴¹ The Council has consistently advised public agencies to complete the SWRCB process before submitting a certification of consistency.

⁴² The Council’s finding of consistency under the substantial evidence standard does not preclude or affect the SWRCB’s consideration of whether the DCP does or does not meet D-1641. The SWRCB is a fact-finder with direct jurisdiction over that issue.

1 SWRCB decisions such as D-1641, whether they are cfs-based or salinity-based
2 ([DCP.V2.14.00023](#), p.4, Delta Plan, Ch. 6 p. 231, [DCP.AA2.7.00005](#), p. 38-39). The
3 Appellant asserts that the D-1641 document itself refers to all flow and flow-dependent
4 objectives collectively as “flow objectives”, as opposed to non-flow dependent water
5 quality objectives such as total maximum daily loads, implemented through restrictions
6 of discharges into a water body and not by flow requirements on to water right holders.
7 ([DCP.D3.1.00321](#), p. 15). The Appellant therefore argues that the Department’s
8 analysis of compliance with all flow and non-flow objectives in D-1641 is incomplete
9 (SDWA Memorandum p.13).

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

19 The Council agrees. For the purpose of ER P1, the flow objectives refer to the
20 amount of water that must be flowing in a watercourse at a given time to protect
21 beneficial uses of water. (See Delta Plan, Ch. 4., at p. 4-69 [“The volume, timing and
22 extent of freshwater flows through the Delta directly affect the health of the
23 ecosystem.”]; *State Water Resources Control Board Cases*, supra, 136 Cal.App.4th
24 674, 701-702.) The Council therefore finds that SDWA failed to raise an appealable
25 issue with respect to meeting salinity-based flow dependent objectives under ER P1.

26 **v. Potential tidal or hydrologic impacts on navigability at**
27 **Steamboat Slough**

28 Appellant Steamboat Resort claims that the Certification of Consistency lacks
29 evidence showing that the Department evaluated “site-specific navigability impacts at
30 Steamboat Slough, including effects on low-tide access, vessel maneuverability,
31 navigational safety or recreational boating conditions relied upon by Steamboat Resort
32 and other nearby recreational users.” (Steamboat Resort, Written Submission, p. 1).
33 Appellant claims that while the Final EIR describes extensive in-water construction
34 activities over an approximately 13-year construction period, including sustained barge
35 and vessel traffic impacts ([DCP.D1.1.00168](#), pp. 20-52-20-62), and evaluates
36 hydrodynamic and water quality conditions at a regional scale associated with the
37 project ([DCP.D1.1.00064](#)), the Certification does not consider how in-water construction
38 activities and sustained barge traffic would affect safe vessel passage within narrow
39 Delta sloughs such as Steamboat Slough.

40 Appellant cites to a DCA *Barge Transportation Study* statement that “Delta
41 waterways are subject to navigational constraints, including shallow depths, narrow

1 channel widths, bridge opening delays, tidal limitations, and seasonal operational
2 restrictions”(DCP.D4.1.00043, pp.2-4), and argues that the Department’s general
3 evaluation of navigability at a program level is not sufficient. Appellant concludes that
4 the Department should evaluate site-specific navigational impacts to Steamboat Slough
5 (Steamboat Resort, Written Submission, p. 2).

6 Flow-related issues impacting navigability, such as low-tide access, vessel
7 maneuverability, navigational safety, and recreational boating conditions, are not within
8 the scope of ER P1, which concerns numeric flow objectives. Furthermore, the record
9 supports that the Department analyzed project effects on downstream hydrodynamics,
10 including water levels, tidal regimes, flow patterns, navigation, and recreation, as noted
11 by the Appellant above. Specifically, the DCA *Barge Transportation Study* does not
12 identify Steamboat Slough as a potential barge access route (DCP.D4.1.00043, pp.2-4).
13 For these reasons, the Council therefore finds that Steamboat Resort failed to raise and
14 appealable issue with respect to impacts on navigability at Steamboat Slough under ER
15 P1there is substantial evidence in the record to support the Department’s finding that
16 the DCP is consistent with ER P1.

17 **d. ER P1 Conclusion**

18 For all the reasons described above, and in light of all the evidence in the record,
19 the Council finds that Appellants have failed to meet their burden, and that there is
20 substantial evidence in the record to support the Department’s finding that the DCP is
21 consistent with ER P1. Accordingly, the Council ***denies the appeals***.

22 **7. Policy ER P2 (Cal. Code Regs., tit. 23 § 5006.): Restore Habitats at**
23 **Appropriate Elevations: Policy ER P3 (Cal. Code Regs., tit. 23 §**
24 **5007.): Protect Opportunities to Restore Habitat; and Policy ER P4**
25 **(Cal. Code Regs., tit. 23 § 5008.): Expand Floodplains and Riparian**
26 **Habitats in Levee Projects**

27 The Department certifies that the DCP is consistent with Delta Plan Policies ER
28 P2, ER P3, and ER P4.⁴³ Appellant SF Baykeeper raises arguments that it is not. These
29 three policies were appealed by SF Baykeeper as a group and are therefore grouped
30 together in the analysis. For the reasons described below, the Council finds that the
31 Appellant has failed to meet its burden, and that there is substantial evidence in the
32 record to support the Department’s finding that the DCP is consistent with ER P2, ER
33 P3, and ER P4. Accordingly, the Council ***denies the appeals*** of these policies as
34 follows:

⁴³ In the Certification, the Department identifies that the operative ER P2, ER P3, and ER P4 policies for the DCP are the 2013 regulatory language, but states that the findings of consistency and consistency conclusion also apply to the April 1, 2025, amended versions of each.

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

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a. Policy Requirements

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

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b. Certification

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

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The Department also finds that the DCP is consistent with ER P3, as it does not significantly impact habitat restoration opportunities in PHRAs (Detailed Findings, p. 137). Where DCP features are in a PHRA, they are sited on the edge, minimizing conflict (Detailed Findings, p. 138). Maps included in the Certification show proposed facilities and mitigation sites relative to PHRAs ([DCP.AA1.2.00016](#), [DCP.AA1.2.00017](#),

1 p. 1). According to the Certification, the DCP would place project features in two Delta
2 Plan PHRAs: the Cosumnes River-Mokelumne River confluence and the Lower San
3 Joaquin River floodplain. The Department finds that these features have been sited to
4 minimize and avoid significant adverse impacts on habitat restoration.
5 ([DCP.AA1.2.00001](#), pp. 139-140). The Certification further discusses how the CMP's
6 project- and program-level actions relate to the Delta Plan PHRAs. ([DCP.AA1.2.00001](#),
7 pp. 140-141.)

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

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

21 **c. Appeals and Analysis**

22 Appellant SF Baykeeper argues that ER P2, ER P3, and ER P4 require
23 improvement, enhancement, and restoration activities as part of a covered action – not
24 mitigation, which the Appellant defines as “the act of reducing the seriousness of an
25 effect.”⁴⁴ The appeal notes that mitigation would reduce some of the significant harm
26 the DCP could cause, but that it does not eliminate those harms or represent an effort to
27 restore or enhance the existing ecosystem. The Appellant also argues that mitigation
28 proposed by the Department is speculative and unlikely to provide benefits to
29 ecosystems or native fish species, and that there is no substantial evidence that the
30 mitigation proposed by the Department will make up for the harms that the DCP would
31 cause. ([SF Baykeeper, Appeal](#), p. 11.)

32 The Appellant references water rights hearing testimony as evidence that the
33 mitigation proposed by the Department will not improve or enhance the Delta
34 ecosystem ([DCP.V2.30.00011](#), pp. 25-26, 30-31, 34-35, 40-41, 43-44, 46-47;
35 [DCP.V2.18.00006](#), pp. 3-6). The Appellant also points out significant and unavoidable
36 impacts of the DCP in the Department’s CEQA Findings of Fact and Statement of
37 Overriding Considerations ([DCP.C.1.00001](#), pp. 9-28) Upon examination, the cited

⁴⁴ The appeal refers generally to “mitigation” that would encompass both “mitigation measures” adopted in the MMRP and “mitigation sites” identified in the CMP but does not identify any specific measure or site at issue.

1 evidence summarizes ecological harms that could result from the DCP but does not
2 describe the efficacy of proposed mitigation and its benefits or drawbacks.

3 ER P2 requires habitat restoration to be carried out at appropriate elevations
4 consistent with California Department of Fish and Wildlife conservation strategies and in
5 accordance with an elevation map in the Delta Plan depicting appropriate habitat
6 restoration actions based on an area's elevation. Appellant does not address the ER P2
7 requirements, or the Department's findings and evidence in the record, but assert the
8 Department's reliance on mitigation measures to claim consistency with ER P2, is not
9 supported by substantial evidence.

10 ER P3 requires covered actions located in specific PHRAs identified in the Delta
11 Plan to avoid or mitigate significant adverse impacts to the opportunity to restore habitat
12 in these areas. The inconsistency claim does not specifically address ER P3 (Cal. Code
13 Regs., tit. 23, § 5007.), requirements to avoid or mitigate significant impacts on habitat
14 restoration opportunities in the PHRAs. Appellant also does not address the
15 Department's evidence that project features in two PHRAs are located at the edges, do
16 not segment the PHRAs, and occupy minimal area, thus not significantly impacting
17 habitat restoration opportunities ([DCP.AA1.2.00001](#), p. 138). While known mitigation
18 sites in the Compensatory Mitigation Plan ("CMP") do not intersect PHRAs, the
19 Department notes that some elements, like channel margin habitat enhancement and
20 tidal marsh wetland restoration, have not yet been located ([DCP.AA1.2.00001](#), p. 141).
21 Substantial evidence in the record establishes that proposed mitigation sites are not
22 located within a PHRA and therefore do not affect future habitat restoration
23 opportunities. The Council cannot speculate about future mitigation locations and their
24 impact on PHRAs.⁴⁵ In addition, Appellant's claim does not address the requirements
25 of ER P3 or the Department's findings and evidence in the record regarding PHRA.

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

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

⁴⁵ Once the mitigation locations have been determined, the Department may be required to file a certification of consistency with the Council for each proposed action prior to implementation.

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

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

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

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

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

15

16 **a. Policy Requirements**

17 ER P5 states:

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

21 (b) For purposes of Water Code Section 85057.5(a)(3) and Section 5001(j)(1)(E)
22 of this Chapter, this policy covers a proposed action that has the reasonable probability
23 of introducing, or improving habitat conditions for, nonnative invasive species.” (Cal.
24 Code Regs., tit. 23, § 5009.)⁴⁶

⁴⁶ The Delta Plan defines “nonnative invasive species” for purposes of ER P5 as “species that establish and reproduce rapidly outside of their native range and may threaten the diversity or abundance of native species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.” (Cal. Code Regs., tit. 23, § 5001, subd. (v).)

1 **b. Certification**

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

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

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

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

33 **c. Appeals and Analysis**

34 SF Baykeeper and San Joaquin County appeal the Department’s Certification
35 regarding ER P5, (San Joaquin Appeal Form p.4-5, San Joaquin Writ. Sub. p. 12, SF
36 Baykeeper Appeal p.11, SF Baykeeper Writ. Sub. p. 14) San Joaquin County is alleging

1 a lack of MMs that address the invasive golden mussel;⁴⁷ alleging a lack of specific
2 information or evidence supporting the Department’s finding that the DCP would not
3 provide habitat for golden mussel, or describing how golden mussel would be controlled
4 on and within DCP facilities (San Joaquin Appeal Form p.4-5, San Joaquin Writ. Sub. p.
5 12). SF Baykeeper additionally allege that the Department fails to address how
6 nonnative invasive fish species benefit from lower, more stagnant river flows, and large
7 infrastructure projects to prey on native juvenile fish (SF Baykeeper Appeal p.11, SF
8 Baykeeper Writ. Sub. p. 14).

9 **i. Improved habitat conditions for golden mussel**

10 San Joaquin County claims there is no specific information, and therefore no
11 evidence in the record, to support a finding that the Department has fully addressed
12 how the DCP would not provide habitat for the golden mussel, or how golden mussel
13 would be controlled on and within the extensive DCP facilities (San Joaquin County,
14 appeal, pp. 4-5). In its written submittal, San Joaquin County estimates that if the DCP
15 is built, it would create a combined area of roughly 9.5 million square feet of new hard
16 durable substrate that would be available for golden mussel colonization (San Joaquin
17 County, letter pp. 12, [DCP.D1.1.00010](#), pp. 3-15, [DCP.D1.1.00026](#), pp. 2-3).

18 San Joaquin County also states that:

19 [the Department’s] Delta Tunnel would introduce extensive new habitat for
20 golden mussel [...]. These impacts will thus substantially undermine the
21 goal of “protecting, restoring, and enhancing the Delta ecosystem.” (Wat.
22 Code, § 85054 [part of the coequal goals].) For these reasons [...] the
23 Delta Tunnel would have a substantial adverse impact on the achievement
24 of the coequal goals. (Wat. Code, § 85225.10, subd. (a) [basis for an
25 appeal].) (San Joaquin County, Writ. Sub., pp.14-15)

26

27 The Department’s Certification regarding ER P5 includes a list of invasive
28 species programs that the Department participates in ([DCP.AA1.2.00001](#), pp. 159-160),
29 including the interagency Golden Mussel Task Force led by CDFW where the
30 Department writes:

31 The Department staff identified a new invasive bivalve at the Port of
32 Stockton in October 2024: the Golden Mussel (*Limnoperna fortunei*). Interagency
33 monitoring efforts soon discovered these mussels at 40 locations throughout the
34 central and southern area of the Sacramento–San Joaquin Delta as well as the
35 SWP. The Department is an active member of the interagency Golden Mussel
36 Task Force led by CDFW, where agency staff develop coordinated monitoring

⁴⁷ Specific MMs are not required by ER P5. Issues related to mitigation measures addressing golden mussel are addressed in the analysis and findings concerning G P1(b)(2) – Mitigation Measures.

1 plans as well as a Golden Mussel Response Plan in coordination with the
2 California State Lands Commission and other participating agencies. The Golden
3 Mussel Response Framework provides recommendations to state and local
4 policy makers, managers, and the public on how to respond to the recent
5 detections of golden mussel through a common framework across agencies and
6 jurisdictions. It is the goal of the State of California to prevent further
7 introductions and spread of golden mussel within the state, contain mussels
8 within currently infested waters, and suppress mussel populations within infested
9 waters to minimize impacts on the environment, economy, infrastructure, and
10 human health.” ([DCP.AA2.1.00072](#), pp. 4-5)

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

17 The Department acknowledges that “golden mussels are a real threat, and the
18 Department has set a process to deal with them in its adaptive management plan” ([Vol.](#)
19 [2, Hearing Transcript \(HT\)](#), 16:8-10). The Department points to the CDFW Golden
20 Mussel webpage ([DCP.AA2.1.00069](#)) and the Golden Mussel Response Framework
21 mentioned above ([DCP.AA2.1.00072](#), p. 9) to point out that the Golden mussel is
22 already present in the Delta, that the spread through conveyance systems has no
23 known prevention mechanisms, and that the overland spread should be prevented. The
24 Department actively participates in various multi-agency and statewide efforts, such as
25 the Golden Mussel Task Force, with the goal to manage the treatment of invasive
26 nonnatives species as threats develop ([DCP.AA1.2.00001](#), p. 159). The Department
27 also includes MM AQUA-1b *Develop and Implement a Barge Operations Plan* related to
28 preventing the spread of invasive species generally via watercraft. The Department also
29 states that the DCP Incidental Take Permit contains provisions related to nonnative
30 invasive species, which does not include measures to control the golden mussel
31 ([DCP.U1.1.00001](#)).

32 Additionally, the Department states that after construction, the DCP will be part of
33 the SWP and the Department must comply with all applicable SWP programs, plans,
34 and other commitments related to managing the potential for new introductions of or
35 improved habitat conditions for nonnative invasive species ([DCP.AA1.2.00001](#), p. 159).
36 The Department hosts the Aquatic Nuisance Species Program ([DCP.AA2.1.00076](#)),
37 which encompasses invasive species planning, prevention, surveillance, rapid
38 response, and management in the SWP and the Delta. The Department implements the
39 Quagga and Zebra Mussel Prevention Program for the SWP ([DCP.AA2.1.00083](#)), the
40 Quagga and Zebra Mussel Rapid Response Plan for the SWP ([DCP.AA2.1.00077](#)), and
41 the Quagga Mussel Control Plan for Pyramid Lake, Angeles Tunnel, and Castaic Lake
42 ([DCP.AA2.1.00081](#)) to control invasive mussels.

1 The record establishes that the Department became aware of the golden
2 mussel's presence in the Delta in October 2024, and that the Department participates in
3 program-wide interagency efforts with a specific focus on managing the proliferation of
4 the golden mussel ([DCP.AA2.1.00069](#); [DCP.AA2.1.00072](#)). The record also establishes
5 that the Department has generally considered the potential for the DCP to improve
6 habitat conditions for a range of known invasive species ([DCP.AA1.2.00001](#), pp. 147-
7 163). However, the Certification does not describe, nor does the record support, how
8 the Department fully considered and avoided or mitigated the potential for the *proposed*
9 *DCP facilities to improve habitat conditions* for the *invasive golden mussel*.⁴⁸ The DCP
10 is a proposed water conveyance facility that will provide extensive infrastructure-water
11 interface areas representing habitat for the golden mussel. ([DCP.AA2.1.00072](#), p.3).
12 The failure of the Department to address how the facilities themselves could improve
13 habitat for the golden mussel is inconsistent with ER P5.

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

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

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

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

⁴⁸ The Council notes that neither the DCP ITP nor its adaptive management plans include mention of golden mussel, and the record does not describe if or how techniques used to manage Zebra or Quagga mussels are effective to manage golden mussel.

1 *of Resources Recycling & Recovery*, supra, 34 Cal.App.5th 663, 669; See also
 2 *Desmond v. County of Contra Costa*, supra, 21 Cal.App.4th 330, 335.)

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

7 **d. ER P5 Conclusion**

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

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

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

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

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

26

27 **a. Policy Requirements**

28 DP P1 states:

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

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

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

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

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

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

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

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

27 **b. Certification**

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

1 **c. Appeals and Analysis**

2 Pear Fair and Steamboat Resort appeal the Department’s Certification of
3 Consistency with DP P1, alleging that the policy applies to the DCP, claiming that
4 structures associated with the DCP are “industrial-type facilities,” and that public
5 ownership does not disqualify the DCP from the policy. Because the Certification finding
6 is that the policy does not apply, the Council considers the question of whether DP P1
7 applies below.

8 Pear Fair claims that the “Final EIR establishes that the Project includes
9 permanent and long-duration industrial facilities immediately adjacent to rural
10 communities” (Pear Fair, Supplemental Submission, p.1), referring to the Final EIR
11 characterization of Project facilities as industrial in nature, and citing Final EIR
12 statements that describe features as “industrial looking” and “industrial-type facilities,”
13 Pear Fair Appeal, p. 2; [DCP.D1.1.00156](#), p. 18-52). Steamboat slough claims that the
14 “extended construction period effectively industrializes the setting of Courtland for more
15 than a decade” (Steamboat Resort, Writ. Sub., pp. 1-2).

16 Steamboat Resort also claims that the Final EIR characterizes the Project’s
17 components as “industrial in nature, including intake facilities, sediment basins, access
18 roads, fencing, buildings, substations, and other large-scale conveyance infrastructure”
19 (Steamboat Resort, Writ. Sub., p. 2). Appellant also notes the extended construction
20 duration and claims that the Department’s Certification “does not evaluate whether long-
21 term industrial facilities and activity adjacent to Steamboat Slough are compatible with
22 these [Land Use and Resource Management Plan and the Delta Economic
23 Sustainability Plan] adopted land-use objectives” (Steamboat Resort, Writ. Sub., p. 3).

24 The Department finds that DP P1 is not applicable to the DCP because it
25 involves a state-government use and does not include residential, commercial, or
26 industrial development regulated by DP P1 ([DCP.AA1.2.00001](#), p. 30). The intent of DP
27 P1 is to apply only to new residential, commercial and industrial urban development
28 (Delta Stewardship Council, Final Statement of Reasons (“FSOR”), Cal. Code Regs., tit.
29 23, § 5010, July 2013, p. 4) While the Council recognizes community concerns
30 regarding the appearance and scale of DCP facilities within the Delta’s rural landscape,
31 these uses are state-government public facilities not industrial development, and
32 therefore are not covered by DP P1 because they do not “involve new residential,
33 commercial, and industrial development” as described in DP P1 subsection (c). (Cal.
34 Code Regs., tit. 23, § 5010, subd. (c).) Therefore, the Council finds that DP P1 does not
35 apply to the DCP.

36 **d. DP P1 Conclusion**

37 For the reasons discussed above, the Council finds that Pear Fair and
38 Steamboat Resort failed to meet their burden, and that there is substantial evidence in
39 the record to support the Department’s finding that DP P1 does not apply to the DCP.
40 Therefore, the Council ***denies the appeals.***

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

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

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

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

1

2

1 **a. Policy Requirements**

2 DP P2 states:

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

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

16 **b. Certification**

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

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

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

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

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

16 **c. Appeals and Analysis**

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

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

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

- 1 15. Tribal cultural resources and uses
- 2 16. Community Benefits Agreements and Community Benefits Program
- 3 17. Levee maintenance
- 4 18. Noise conflicts

5 The Council considers each issue below.

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

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

26 Appellants argue that DP P2 requires consideration of both existing uses and
27 those uses described or depicted in city or county general plans, and that the language
28 of the policy means project siting should not conflict with current or planned future uses.
29 County of Sacramento argues that the Department misinterprets the plain language of
30 DP P2, which Appellant reads to require an analysis of both existing uses and those
31 depicted in city and county general plans, rather than one or the other ([County of](#)
32 [Sacramento, Appeal](#), p. 60). While County of Sacramento does not dispute that the
33 Department considered existing uses, Appellant asserts that the Department did not
34 adequately analyze the County’s general plan or its interaction with DCP siting. ([County](#)
35 [of Sacramento, Appeal](#), pp. 60-61). Sac Sewer and City of Stockton state: “Without
36 citing to authority, [the Department] asserts that there are two possible approaches to
37 evaluate consistency with DP P2: [the Department] could either consider existing uses
38 or [the Department] could consider uses depicted in the general plans
39 ([DCP.AA1.2.00018](#), p. 1). [The Department] ‘elected to primarily follow the first
40 approach’ but also ‘included a consideration of land uses depicted in general plans ...
41 although this consideration is not required.’ ([DCP.AA1.2.00018](#), p. 1). These Appellants
42 argue that the Department misinterprets the plain language of DP P2, which they

1 believe requires an analysis of both existing uses and those depicted in city and county
2 general plans ([Sac Sewer, Appeal](#), pp. 51-52; City of Stockton, Appeal, Memo, p. 39).
3 City of Stockton further argues that the Department provides no analysis of city general
4 plans, including Stockton’s ([DCP.AA1.2.00018](#), p. 4).

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

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

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

21 Appellant Sac Sewer asserts that the DCP is inconsistent with both existing uses
22 and uses described or depicted in the Sacramento County General Plan associated with
23 Harvest Water ([Sac Sewer, Appeal](#), pp. 42-45)⁴⁹. Specifically, the Appellant contends
24 that the location of the TCC⁵⁰ presents conflicts due to the TCC site’s current
25 agricultural use and the Harvest Water infrastructure that has been recently completed
26 or is presently under construction. Furthermore, Appellant maintains that the TCC would
27 be incompatible with the agricultural uses described and depicted in the Sacramento
28 County General Plan, as well as the groundwater recharge benefits and Greater

⁴⁹ Harvest Water is described by Sac Sewer as “a recycled water program that will support agricultural irrigation while creating, protecting and enhancing critical wildlife habitat and contributing to groundwater sustainability efforts by serving as a foundational project and management action to support the Sustainable Groundwater Management Act for the South American and Cosumnes groundwater subbasins.” ([Sac Sewer, Appeal](#), p. 18)

⁵⁰ TCC is described by the DCA as “a dual launch shaft. – One shaft of the [TCC] dual launch shaft site would be used to construct the tunnel north to the intakes (Tunnel Reach 1). – The other shaft would be used to construct a tunnel south to a tunnel reception shaft on Terminous Tract (Tunnel Reach 2). Reach 2 would include tunnel maintenance shafts on New Hope Tract and Canal Ranch Tract. – The site would be sized to accommodate all facilities and functions necessary for tunneling operations, including [RTM] processing, testing, drying and stockpiling.” ([DCP.D4.3.00001](#), pp. 2-6)

1 Sandhill Crane habitat supported by those agricultural activities, both of which are
2 considered essential to the success of the program. The Appellant also argues that
3 these conflicts may jeopardize funding awarded to Sac Sewer by the California Water
4 Commission under the Water Storage Investment Program (WSIP), and which is vital to
5 the continued progress of the Harvest Water program.

6 As a threshold matter, it is undisputed that the existing use of the TCC site is
7 agriculture ([DCP.D3.1.03807](#)). The Sacramento County General Plan land use diagram
8 designates the TCC site as Agricultural with an 80-acre minimum lot size. Adjacent
9 parcels also carry a Resource Overlay combining designation that recognizes their
10 value as habitat resources for special status species ([DCP.D3.1.03807](#)). DP P2 requires
11 the Department to demonstrate that it sited the TCC (as a component of the DCP) to
12 avoid or reduce potential conflicts with existing uses or those uses described or
13 depicted in the Sacramento County General Plan or explain why it was infeasible to do
14 so.

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

16 In the Certification, the Department mentions Harvest Water in DP P2
17 Attachment 1 ([DCP.AA1.2.00018](#), Table 7).⁵¹ In the Final EIR comment responses in
18 DP P2 Attachment 1, the Department states that it consulted with Sac Sewer⁵²
19 regarding the DCP and Harvest Water and that it evaluated whether the DCP would
20 directly impact lands prioritized for the implementation of Harvest Water, finding that in
21 2020 “the TCC, including the associated RTM footprint, and the northern concrete batch
22 plants along Lambert Road are not located on properties that are identified as initially
23 receiving Harvest Water, and there are currently no service collection laterals identified
24 in the project map in the most recent CEQA document for Harvest Water to those
25 locations.” The Department notes that the comment raises concerns about potential
26 conflicts between the DCP and Harvest Water ([DCP.AA1.2.00018](#), pp. 81-82). The
27 Department further states that the RTM and other excavated materials will be tested
28 and hazardous materials treated and disposed of properly and that, through local
29 coordination, safe surplus fill would be transferred to local agencies based on their
30 needs. The Department adds that due to the uncertainty about possible future use of
31 RTM for other projects, their analyses assume that all RTM removed for the tunnel will
32 be stored at RTM storage sites ([DCP.AA1.2.00018](#), p. 82).

33 In its Certification, the Department acknowledges that the TCC tunnel shafts
34 have potential to conflict with existing water supply uses and that these conflicts were
35 minimized through the design of the DCP and by MMs in the Final EIR
36 ([DCP.AA1.2.00018](#), p. 99). The Department references MM AG-3, which states that if
37 conflicts to irrigation and drainage infrastructure cannot be avoided, the Department
38 would provide new temporary wells and/or replace infrastructure needed to support
39 ongoing agricultural uses. If those options are not feasible, the Department would

⁵¹ Written as Table 8 in the Certification.

⁵² At the time known as Sacramento Regional Sanitation District.

1 compensate owners for production losses attributable to reductions in water supply from
2 the DCP ([DCP.AA1.2.00018](#), p. 99). The Department goes on to claim, referencing Sac
3 Sewer’s Harvest Water website, that Harvest Water will become operational in 2027
4 and therefore is not an existing land use as the Department “has not been made aware
5 that the parcels located at the [TCC] site have been issued Recycled Water Use
6 Permits to participate in the program and can therefore not confirm the potential conflict
7 with the specific location” ([DCP.AA1.2.00018](#), p. 99).

8 Continuing, the Department shares its understanding that Harvest Water would
9 only include willing landowners and that the program does not restrict land use
10 decisions in the area if the Department acquires the parcels. The Department claims the
11 DCP would not conflict with Harvest Water because the TCC would occupy 586 acres
12 (222 acres of which would be permanently occupied) of the 22,000-acre Harvest Water
13 Recycled Water Delivery Area⁵³ and would not conflict with the program’s ability to
14 provide recycled water to other landowners or the various other benefits of the program.
15 In addition, the Department cites the siting considerations outlined in DCA’s Concept
16 Engineering Report (“CER”) Appendix C5 ([DCP.AA1.2.00018](#), p. 99). The CER lays out
17 six considerations made for the launch shaft siting evaluation, starting with “the sites
18 should avoid being in areas of sensitive habitat, such as wildlife preserves or refuges,”
19 and ending with “a site size of 250 to 400 acres was considered for the size constraint”
20 (an area large enough to accommodate the tunnel shaft as well as the construction of it)
21 ([DCP.D4.3.00021](#), p. C5-7). The CER concludes that after construction,
22 geotechnical/geology, property ownership, and land use were analyzed that the TCC
23 site received a “Favorable” final rating, where the evaluations states “No known
24 [protected conservation land, refuges, preserves and/or vernal pool critical habitat]
25 areas exist within the site”. ([DCP.D4.3.00021](#) p. C5-9). The Department does not
26 mention Sandhill Crane habitat or outcomes as a potential conflict with DP P2. The
27 Department also does not address Harvest Water funding obligations within the
28 Certification.

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

30 In its appeal, Sac Sewer argues that Harvest Water is an existing and planned
31 use and the DCP will have significant impacts on Sac Sewer’s ability to provide a
32 reliable supply of recycled water, which Sac Sewer has executed agreements for ([Sac](#)
33 [Sewer, Appeal](#), pp. 1, 42, 44; Sac Sewer, Writ. Sub., pp. 16, 46-47; [DCP.V2.27.00016](#),
34 pp. 7-8). Sac Sewer states that Harvest Water will provide recycled water to support
35 agriculture, wildlife habitat, and groundwater recharge benefits to support Sustainable
36 Groundwater Management Act (“SGMA”) objectives for the South American and
37 Cosumnes groundwater subbasins ([Sac Sewer, Appeal](#), p. 18; Sac Sewer, Writ. Sub.,

⁵³ The record establishes that the recycled water irrigated area for Harvest Water is 16,000 acres. Parcels outside this area cannot be flooded for Sandhill Crane habitat or groundwater recharge. ([DCP.D3.2.00704](#) p. 2-1-2-2; [DCP.D2.3.00509](#), p. 19; [Sac Sewer, Appeal](#), p. 19)

1 p. 46-49). Appellant further argues that Harvest Water was a known allowable land use
2 under the Sacramento County General Plan at the time the Department started planning
3 for the DCP, and that Sac Sewer informed the Department about their concerns in a
4 March 2020 comment letter on the Draft EIR ([DCP.D2.3.00509](#)). In that comment letter,
5 Sac Sewer states that it received WSIP funding for Harvest Water from the California
6 Water Commission that relies in part specifically on the program’s “wintertime water
7 application specifically for Sandhill Crane foraging and roosting habitat”
8 ([DCP.D2.3.00509](#), p. 20). In the comment letter, Sac Sewer also informs the
9 Department that Harvest Water’s requirement to provide foraging and roosting habitat
10 for the Cranes relies on the TCC area identified by the Department as the site for RTM
11 processing and stockpiling, which will make it unusable for Crane habitat and thereby
12 jeopardize its WSIP funding ([DCP.D2.3.00509](#), p. 20). In CPOD water rights hearing
13 testimony, Sac Sewer further states that the Department knew that Harvest Water
14 serves as the foundational project and management action to support the Sustainable
15 Groundwater Plans for the South American and Cosumnes groundwater subbasins
16 approved by the Department in October 2023, as required under SGMA
17 ([DCP.V2.27.00001](#), p. 2-3, [DCP.V2.27.00016](#), p. 4-6, [DCP.V2.29.00005](#), p. 4-7).
18 According to Sac Sewer, construction of Harvest Water facilities is expected to be
19 completed by the end of 2026 and testing, start-up, and commissioning of the facilities
20 is planned for early 2027 to support starting delivery to some properties during the 2027
21 irrigation season ([DCP.V2.27.00016](#), p. 7, sacsewer.com/harvest-water)

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

36 The Department continues by stating that its record does not establish any site-
37 specific land use or ecological commitments regarding the TCC site as a requirement
38 for Harvest Water, citing the 2020 EcoPlan and the 2017 South Sacramento County
39 Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive

1 Use Program ([DCP.D3.2.00704](#); [DCP.V2.27.00022](#)).⁵⁴ The Department further
2 reiterates that only willing landowners will be part of Harvest Water, which does not
3 restrict land use decisions if and when the Department acquires the parcels for the TCC
4 and describes Harvest Water as a framework to guide future implementation that does
5 not identify or designate the TCC as a site specific location for program implementation
6 (Department Writ. Sub. p. 36, [DCP.D3.2.00704](#); [DCP.V2.27.00003](#); [DCP.V2.27.00022](#)).
7 The Department continues, stating that “the [TCC] will occupy 586 acres (with 222 acres
8 being permanent) of the Harvest Water delivery area, which is approximately 22,000
9 acres ([DCP.D1.1.00028](#), [DCP.D1.1.00247](#), p. 1118) and will not conflict with Sac Sewer
10 providing recycled water to other landowners.

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

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

33 Sac Sewer also argues that construction of the TCC will negatively impact
34 Sandhill Crane habitat provided by Harvest Water ([Sac Sewer, Appeal](#), pp. 25-26, 44;
35 Sac Sewer Writ. Sub. p. 48-49). Sac Sewer cites record evidence describing potential
36 impacts on Sandhill Crane habitat and populations, including the removal of 644 acres
37 of habitat within Harvest Water due to the siting of the proposed TCC through the water
38 rights hearing testimony of Dr. Gary Ivey. Dr. Ivey’s expertise regarding Greater Sandhill

⁵⁴ What is referred to today as Harvest Water was formerly known as the “South Sacramento County Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive Use Program.”

1 Cranes was also relied on within the Department’s Final EIR, and he is the lead author
2 and coordinator of the Department’s Greater Sandhill Crane Conservation Strategy
3 ([DCP.V2.27.00001](#), p.3, [DCP.V2.17.00005](#), p.3, 13).

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

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

26 **(d) Department’s position on applicability and**
27 **consistency**

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

1 (e) Analysis

2 In summary, Sac Sewer claims that the DCP will impact Harvest Water’s WSIP
3 funding because the location chosen for the TCC conflicts with an area identified as a
4 Sandhill Crane habitat mitigation site. Sac Sewer was required to set aside Sandhill
5 Crane habitat to execute an existing CAPB. Sac Sewer argues that the TCC site was
6 the only mitigation option safe from sea level rise, suitable for foraging and roosting, and
7 located between the Stone Lakes National Wildlife Reserve and the CRP, in order to
8 provide the highest value habitat. To meet requirements for WSIP funding, Sac Sewer
9 must track and provide evidence that the anticipated ecological benefits are occurring
10 pursuant to its contract, including those for Sandhill Crane foraging and roosting habitat
11 ([Sac Sewer, Appeal](#), pp. 25-26; [DCP.V2.27.00016](#), p. 6). Sac Sewer argues that
12 Harvest Water is an existing use, as demonstrated by nearly completed construction,
13 secured entitlements, and secured state and federal funding, all of which depend on
14 continued agricultural use of the TCC site, as described and depicted in the Sacramento
15 County General Plan and SSHCP. Sac Sewer states that failing to meet its contractual
16 obligations could cause Sac Sewer to lose its funding, impacting its ability to implement
17 Harvest Water and thereby jeopardizing implementation of Groundwater Sustainability
18 Plans under SGMA. Appellant argues that the Department should: (a) demonstrate,
19 through specific analyses of the impacts to Harvest Water that it sited the DCP project
20 features (in this instance, the TCC) to avoid or reduce potential conflicts (in this instance
21 with the existing and general plan-depicted future agricultural use of the site); or (b)
22 explain why it is infeasible to do so. The Council agrees.

23 The record indicates that the Department did not thoroughly review or fully
24 comprehend DCP siting conflicts with Sac Sewer’s Harvest Water, including the critical
25 dependence of program funding on location-specific habitat improvements, the extent of
26 recycled water irrigation areas, and the impact that reducing these areas would have on
27 the Groundwater Sustainability Plans for the South American and Cosumnes
28 groundwater subbasins, which were approved by the Department in July 2023 under
29 SGMA. The Department asserts its understanding that Harvest Water collaborates with
30 willing landowners and that Sac Sewer may utilize any remaining acres; however, this
31 presupposes an overlap of suitable roosting and foraging habitats that can be
32 monetized at the same value for the Sandhill Crane habitat as the TCC parcels, and
33 also requires those parcels to be owned by cooperative landowners. In its Certification
34 and written submittal, the Department contends that Harvest Water can supply recycled
35 water to additional landowners within the 22,000-acre program area. This demonstrates
36 a misunderstanding of the program, as the recycled water irrigation area is limited to
37 16,000 acres. The Department also fails to recognize that the specific location at TCC is
38 integral to securing the level of WSIP funding for which the program has received
39 approval.

40 All of these considerations are contingent upon the selection of a site by the
41 Department for tunnel access shafts and collection, processing, and stockpiling of RTM
42 – a site which is currently in agricultural use and described and depicted as Agriculture
43 with an 80-acre minimum lot size in the relevant local general plan. The Council

1 concludes that it is reasonable for Sac Sewer to base programmatic decisions on the
2 assumption that the TCC site would retain its Agriculture land use designation, thereby
3 facilitating recycled water application, groundwater recharge, and habitat support for
4 Sandhill Cranes—purposes permitted within the Agriculture designation and compatible
5 with agricultural activities.

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

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

20 The Council therefore **remands the matter** to the Department to consider and
21 avoid or reduce conflicts between the siting of the TCC and Harvest Water regarding
22 agricultural use, groundwater recharge, and Sandhill Crane habitat to the extent
23 feasible.

24 **iii. Consideration of alternative sites**

25 Appellants the Commission, Pear Fair, County of Sacramento, Sac Sewer, City
26 of Stockton, SDWA, and San Joaquin County all raise arguments claiming there is a
27 lack of substantial evidence that the Department adequately considered other possible
28 alternatives and sites to the DCP.

29 The Department asserts that DP P2 requires evaluating impacts of the physical
30 siting of facilities on existing uses, not evaluating broader programmatic alternatives, or
31 alternative conveyance concepts. The Department states that Appellants incorrectly
32 expand DP P2 to require a broader alternatives analysis (Department Writ. Sub., p.45).
33 The Department continues, that while not required to demonstrate consistency with DP
34 P2, the Final EIR evaluated a large array of alternatives, as summarized in App. 3A
35 (Department Writ. Sub., p. 20, citing [DCP.D1.1.00011](#), pp. 3A-18- 3A-19). Alternatives
36 considered include those related to improving a through-Delta water conveyance
37 corridor without north Delta intakes as well as desalination in the Delta (Department
38 Writ. Sub., p. 20). In addition, the Department claims that “substantial evidence in the
39 record demonstrates that, in consideration of specific design elements implemented by
40 [the Department], [the Department] sited the DCP to avoid or reduce conflicts with
41 existing land uses where feasible” (Department Writ. Sub., p.10).

(a) Through-Delta conveyance alternative

Sac Sewer argues that the record fails to demonstrate that the Department could not feasibly site the DCP to avoid or reduce conflicts with land uses ([Sac Sewer Appeal](#), p. 45). Appellant argues that a through-Delta approach was not considered, contesting expert water rights hearing testimony that this would be the best approach ([DCP.V2.22.00001](#) pp. 2-11.) In support of its argument, Sac Sewer mostly cites to SEC discussions: ([DCP.V2.14.00039](#); p. 6; [DCP.V2.20.00037](#), pp. 2-5; [DCP.V2.20.0004](#); [DCP.V2.20.00044](#); [DCP.V2.20.00041](#)).

In their combined written submittal, County of Sacramento, Sac Sewer, and City of Stockton further develop the argument that “[the Department’s] Certification also did not analyze an alternative of creating a freshwater or armored pathway formed by Delta levees that guide fresh water from the Sacramento River to the south Delta and points of diversion for export” (Combined Writ. Sub., p.28; [DCP.V2.22.00001](#), p. 4). They state that “[Metropolitan Water District] estimated a total cost of approximately \$400 million to \$700 million to improve the entire through-Delta freshwater pathway sufficient to withstand sea level rise and seismic risk” (Combined Writ. Sub., p. 28, citing [DCP.V2.22.00008](#), p. 96). The Appellants argue that the Department “does not demonstrate with substantial evidence that it considered the alternative of a through-Delta diversion with brackish water desalination” which they claim, though without citing to evidence, “would address [the Department’s] objectives of mitigating salinity and seismic risks, avoid conflicts with local land uses, and likely have support of all the parties who oppose the DCP” (Combined Writ. Sub., pp. 28-29).

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

1 In its written submission the Department replies that it analyzed a “through-Delta”
2 alternative, and it was determined that this alternative “failed to meet multiple
3 fundamental project objectives and therefore was not a feasible approach for the DCP”.
4 The Department goes on to cite *Bay-Delta Programmatic Environmental Impact Report*
5 *Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165 which states “an EIR need not
6 study an alternative that fails to meet the proposed project’s fundamental purpose
7 because such an alternative is infeasible.” (Department Writ. Sub., p. 20).

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

9 The Commission states that the DCP was not sited to avoid conflicts with existing
10 uses and the Department has not demonstrated that it is infeasible to achieve project
11 goals with alternatives to avoid these conflicts. The Commission argues that project
12 alternatives considered by the Department are “meaningfully no different than the
13 proposed project, as suggested by the [Delta ISB] in comments on the Draft EIR”
14 (Commission Appeal Attachment B pp.7-9). As an example, the Commission notes that
15 it has advocated for a “portfolio” approach of through-Delta conveyance and reduced
16 reliance on exports as an alternative to the DCP, but this was not considered by the
17 Department in its analysis (Commission Appeal p. 20, Attachment B, p. 8). The
18 Commission points to their own comments on the Draft EIR which “raised concerns
19 about lack of consideration of alternatives and protection of Delta as Place values”
20 (Commission Writ. Sub., p.8, citing [DCP.D1.1.00241](#) and [DCP.D1.1.00224](#)). In its
21 written submission, the Commission argues that the Department’s consistency with DP
22 P2 is not supported by substantial evidence because the Department “failed to seriously
23 consider feasible alternatives to the [DCP] including ...the ‘Resilient Water Portfolio’
24 approach advocated by the Delta Counties Coalition for many years” (Commission Writ.
25 Sub., p. 7, citing [DCP.D1.1.00011](#), p. 3A-18 – 3A-19).

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

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

2 The Commission states that the DCP was not sited to avoid conflicts with existing
3 land uses and the Department has not demonstrated that it is infeasible to achieve
4 project goals with alternatives to avoid these conflicts. The Commission points to its
5 own comments on the Draft EIR which “raised concerns about lack of consideration of
6 alternatives and protection of Delta as Place values” (Commission Writ. Sub., p.8)
7 ([DCP.D1.1.00241](#); [DCP.D1.1.00224](#)). In its written submission, the Commission argues
8 that DP P2 is not supported by substantial evidence because “the Department “failed to
9 seriously consider feasible alternatives to the project including a Western Delta location
10 (Western Delta Intake Concept)...” (Commission Writ. Sub., p. 7, [DCP.D1.1.00011](#), p.
11 3A-18).

12 City of Stockton argues that the Department’s assertion to not site intakes further
13 West due to salinity concerns is flawed because the Department separately asserts that
14 the intakes will only divert when Delta flows are high and freshwater would be
15 abundant.⁵⁵ Additionally, City of Stockton argues the Western Alignment that was
16 deemed logistically infeasible in WaterFix remained in the DCP final EIR as a
17 “strawman” alternative ([DCP.V2.5.00001](#)).

18 San Joaquin County argues that the Department incorrectly assumes that the
19 proposed intake location is the only possible location. Appellant states there are two
20 alternative sites that would reduce conflict with respect to DP P2 more than the
21 proposed project plan: one that originates in the West Delta and one that depends on
22 existing levee infrastructure in the Delta (San Joaquin County Appeal, p. 5). San
23 Joaquin County argues that Department was incorrect to dismiss the Western Delta
24 location because the Department overstates the seismic risks on Sherman Island
25 ([DCP.V2.22.00001](#), pp. 3-5). Appellant also claims that the threat of sea level rise is
26 overestimated and references the Council’s Delta Levees Investment Strategy (San
27 Joaquin County Appeal, p. 7, citing [DCP.D3.1.00507](#)). Appellant also argues that the
28 logic behind dismissing the Western Delta location because of lower water quality in the
29 summer is flawed based on the proposed timing of when exports would be taking place
30 according to the Department’s Operation Plan (San Joaquin County Appeal, p. 7, citing
31 [DCP.V1.2.00255](#), pp. 9-10). Appellant concludes that siting in the West Delta would be
32 less disruptive and would cost less because the Department owns Sherman Island,
33 pointing to the Final EIR Appendix 3A for information on cost efficiency and the
34 construction footprint (San Joaquin County Appeal, p. 7, citing [DCP.D1.1.00011](#)).
35 Appellant argues that siting the DCP at this location would also alleviate the land use
36 conflicts in the current proposed location because there is adequate Department-owned
37 space on Sherman Island for the DCP’s RTM disposal needs ([DCP.D1.1.00010](#), pp. 3-
38 32).

⁵⁵ Appellant cites to [DCP.V2.20.00044](#), p. 15, which is an incorrect reference in the record.

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

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

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

26 Pear Fair claims that the Department determined consistency with DP P2 without
27 analyzing alternative siting options that would have avoided or reduced conflicts with
28 existing land uses (Pear Fair Appeal, p. 6; [DCP.D6.1.00129](#)). For example, Pear Fair
29 claims that the Department received input in various forums regarding facility locations,
30 but the same sites first proposed were carried forward with “no deference to community-
31 identified alternatives” that could have reduced or eliminated conflicts in Hood and
32 Courtland (Pear Fair Appeal p. 6).

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

40 City of Stockton argues that the record does not demonstrate that the
41 Department could not feasibly site the Covered Action to avoid or reduce conflicts with

1 land uses (City of Stockton Appeal, pp. 35-38). The Appellant argues that the
2 Department does not provide evidence of engaging the public regarding the siting of the
3 intakes or tunnel shafts ([DCP.AA1.2.00019](#), pp. 8, 29-31) and that siting is solely based
4 on decade-old information that ignores that the Delta is an evolving place
5 ([DCP.D2.3.00493](#), p. 14). The Appellant points to the fact that siting is no different than
6 WaterFix despite the designation of the Delta as a National Heritage Area and public
7 expectations to reconsider intake siting. The Appellant cites evidence from SEC
8 meetings and water rights hearing materials as evidence that alternative siting was not
9 meaningfully considered ([DCP.V2.14.00039](#), p. 6, [DCP.V2.20.00037](#), p. 3).

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

24 Appellants state “the original BDCP intake locations, incorporated in the DCP,
25 were selected prior to any environmental review under the [CEQA] or adoption of the
26 Delta Plan” (Combined Writ. Sub., p. 27), arguing that intake locations were sited before
27 harms were fully analyzed. Appellants also argue that members of the SEC were not
28 allowed to discuss alternative intake siting, being told that the intake locations were
29 fixed and not up for discussion (Combined Writ. Sub., pp. 29–30). The Appellants cite
30 water rights hearing testimony and SEC member letters to support these claims
31 ([DCP.V2.20.00037](#); [DCP.V2.20.00041](#); [DCP.V2.20.00043](#)). Appellants argue that
32 refusal to engage with SEC members on siting shows that “[the Department] did not
33 consider the feasibility of alternative siting locations” and that “[the Department]
34 provides no substantial evidence to support the claim that intake location was dictated
35 by ‘administrative requirements’” as purportedly claimed during SEC meetings
36 (Combined Writ. Sub., pp. 29-30).

37 In the Certification, the Department describes convening a Value Planning Study
38 (“VPS”) “to assist in further defining intake locations and configurations”
39 ([DCP.AA1.2.00018](#), p. 13). The Department states “the findings made during the BDCP
40 siting evaluations for the north Delta intakes were overall still valid” ([DCP.AA1.2.00018](#),
41 p. 14). In the Final EIR Appendix 3A, the Department states: “For the [DCP], the [DCA]
42 reviewed and reconsidered the previously considered intake site locations again in 2019
43 and reexamined the reach of the Sacramento River between Freeport and the

1 confluence with Sutter Slough for other viable intake sites” ([DCP.D1.1.00011](#), p. 4). The
2 Certification breaks up the prospective intake locations in Reach A through Reach I and
3 walks out the analysis for each, citing the Final EIR Appendix 3A ([DCP.D1.1.00011](#)) and
4 the CER and attachments ([DCP.D4.3.00001](#); [DCP.D4.3.00009](#)).

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

12 **(e) Analysis**

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

20 DP P2 requires a certifying agency to “avoid or reduce conflicts...when
21 feasible...”. The Department has provided substantial evidence in the record that
22 analyses of alternative sites were conducted in an attempt to reduce conflicts where
23 feasible (Department Writ. Sub., p. 20, citing [DCP.D1.1.00011](#), pp. 3A-18- 3A-19). The
24 DCP encompasses a substantial portion of the Delta, and while the Council remains
25 mindful of possible effects resulting from the placement and construction of the
26 proposed DCP, DP P2 does not mandate an examination of distinct project alternatives
27 or a completely different project than the one submitted by the certifying agency. For the
28 reasons above, the Council finds that the Commission, Pear Fair, County of
29 Sacramento, Sac Sewer, City of Stockton, SDWA, and San Joaquin County have failed
30 to meet their burden, and that there is substantial evidence in the record to support the
31 Department’s finding that the DCP is consistent with DP P2 regarding consideration of
32 alternative sites.

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

34 Sac Sewer argues that the DCP conflicts with existing and planned land uses
35 associated with Sac Sewer’s EchoWater wastewater treatment facility, and therefore the
36 DCP is inconsistent with DP P2 ([Sac Sewer, Appeal](#), pp. 41-44).⁵⁶ Alleged conflicts with

⁵⁶ According to Sac Sewer, “EchoWater, which was previously known as the Sacramento Regional Wastewater Treatment Plant, is an advanced tertiary treatment facility that receives

1 EchoWater result mainly from increased occurrence and length of reverse flows in the
2 Sacramento River due to DCP operations. Sac Sewer cites testimony that describes
3 how discharge from the EchoWater facility is authorized and regulated under National
4 Pollutant Discharge Elimination System (“NPDES”) permits and how altered conditions
5 of the Sacramento River at Freeport due to DCP operations upstream would require
6 Sac Sewer to divert effluent more often, for longer durations, and in larger quantities
7 than under existing conditions ([DCP.V2.27.00010](#)). Appellant claims: “Sac Sewer
8 planned, designed, and constructed all ESBs (Emergency Storage Basins) in
9 consideration of future operations and contingencies, before it had any information
10 about how the DCP might increase the number of EchoWater diversions required”
11 ([DCP.V2.27.00010](#)). Sac Sewer argues that the lost operational flexibility and increased
12 maintenance costs are negative impacts that the Department has not addressed.

13 The Department’s proposed mitigation is to coordinate operations with Sac
14 Sewer by sharing information and modelling results about reverse flows
15 ([DCP.V2.27.00010](#), pp. 9-10; [DCP.V1.2.00309](#), p. 2; [DCP.V2.27.00013](#), pp. 7-8).
16 Appellant argues that this is not sufficient mitigation, as the Department does not intend
17 to modify DCP operations to minimize reverse flow impacts ([DCP.V1.1.00018](#), pp. 116–
18 117; [DCP.V2.27.00016](#), pp. 7-8, 9-10; [DCP.V2.27.00010](#), p. 8, pp. 9-10). Appellant
19 states: “[S]imply sharing forecasts does not substitute for meaningful action, and [the
20 Department’s] refusal to commit to operational adjustments leaves Sac Sewer
21 vulnerable to potential harm from reverse flows in a manner that conflicts with the
22 existing EchoWater facility and is inconsistent with ... DP P2” (Combined Writ. Sub., p.
23 46).

24 The Department’s Certification acknowledges the increased frequency and
25 duration of reverse flows at the intake site as supported by detailed water quality
26 modeling of existing versus with-project conditions ([DCP.AA1.2.00019](#), pp. 24-34). The
27 Department notes an increase in reverse flows during operation: “The results of the
28 assessment determined that the frequency of reverse flows in the Sacramento River
29 upstream of the intakes will increase slightly during intake operation. These increased
30 reverse flows, however, are small in both duration and distance and results show that
31 there is no increase in the frequency of *stronger* [emphasis added] reverse flow events
32 caused by project operations” ([DCP.AA1.2.00019](#), p. 34). Additionally, the Department
33 cites Final EIR Volume 1, Chapter 5, Surface Water ([DCP.D1.1.00032](#), p. 5-27) and
34 Appendix 5C, which show model results and monthly changes in flow by water year
35 type without the project and under with-project scenarios ([DCP.D1.1.00054](#)). According
36 to the Department: “sites downstream of the Freeport Regional Water Authority intake
37 and Sac Sewer outfall will have less impact on the total flow rate in the river and reverse
38 flows affecting Sac Sewer’s treated wastewater outfall at Freeport” ([DCP.AA1.2.00018](#)).

39 Finally, Sac Sewer argues that potential conflicts may occur “where the intakes,
40 tunnel alignment or other facilities ... may be constructed over or adjacent to existing

wastewater not only from Sac Sewer, but also from local wastewater collection systems operated
by the Cities of Folsom, Sacramento, and West Sacramento.” ([Sac Sewer, Appeal](#), p. 17)

1 pipelines and associated appurtenances” ([Sac Sewer, Appeal](#), p. 44). The Department
2 states that “the location of underground utilities sewage pipes connected to EchoWater
3 can be identified and avoided by consulting with Sac Sewer, reviewing available records
4 (e.g., permits), and ground-truthing through potholing. As stated in Final EIR Ch. 21
5 ([DCP.D1.1.00172](#)), conflicts with existing utilities are unlikely to occur. The Final EIR
6 notes that some existing utilities may need to be relocated, but the Department is
7 consulting with utility companies, a process that will continue during the design phase
8 and will avoid interruption to service” (Department, Writ. Sub., p. 40).

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

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

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

31 The Department also notes that “the [CBP] fund could be used to fund actions to
32 enhance efforts that would support the unique culture and history of the Delta
33 community, as well as recreation, agriculture, and the economic vitality of Delta
34 communities, which is consistent with the goals of the Delta Protection Commission’s
35 Economic Sustainability Plan” ([DCP.AA1.2.00018](#), p. 71), drawing upon evidence from
36 the Final EIR ,Ch. 4 ([DCP.D1.1.00028](#), Table 4-3, pp. 542–544). In its written
37 submission, the Department finds that it reduced conflict with “Delta Small
38 Communities” by creating MMs to offset these effects. To support this, the Department
39 cites to: the Accountability Action Plan ([DCP.D6.5.00002](#)) which includes an
40 Ombudsman Program ([DCP.D6.5.00004](#)); the MMRP ([DCP.C.1.00002](#)); and the CBP
41 ([DCP.D6.4.00001](#)); as well as consultation with community advisory groups and
42 numerous project communications materials.

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

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

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

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

37 In its Certification, the Department finds that “it was ultimately not feasible to site
38 the project’s intake facilities in a manner to avoid all potential land use conflicts”
39 ([DCP.AA1.2.00018](#), p. 43). The Department states it evaluated intake locations
40 upstream of downtown Sacramento, but the intakes would have been located at the
41 Sacramento Weir ([DCP.AA1.2.00018](#), p. 13), which is primarily used as a flood control
42 system for the City of Sacramento. Intakes at the Sacramento Weir would have required

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

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

31 Community Action Plans are a standardized way that local unincorporated towns
32 and governments in the Delta can identify economic development, historic preservation,
33 and other goals, often facilitated by the Commission. However, these plans are not uses
34 described or depicted in city or county general plans outlined in DP P2 – rather they are
35 economic development plans that are not necessarily tied to land uses (Delta Plan, Ch.
36 5, p. 176.). Thus, a conflict with a Community Action Plan is not an appealable issue. In
37 addition, the Department has allocated \$200 million in its CBP to benefit economic
38 development in Delta communities, including Hood, and will appoint an Ombudsman for
39 community members to work through any business disruption issues that may arise. For
40 these reasons, the Council finds that Appellants failed to meet their burden, and that
41 there is substantial evidence in the record to support the Department’s finding that the
42 DCP is consistent with DP P2 regarding conflicts with Hood’s Community Action Plan.

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

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

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

On the issue of dewatering and water contamination in Hood, the Department cites to the Final EIR ([DCP.D1.1.00172](#) and [DCP.D4.1.00049](#)) to support its finding that it considered and is aware of potential conflicts with groundwater wells and the Hood Water Treatment Plant, including information describing the proximity of potentially conflicting infrastructure based on current design parameters. The Department also references Final EIR Chapter 21 ([DCP.D1.1.00172](#)) which acknowledges that more in-depth analysis of conflicts with existing utilities will be conducted in subsequent design phases. For these reasons, the Council finds that Appellants failed to meet their burden, and that there is substantial evidence in the record to support the Department’s finding

1 that the DCP is consistent with DP P2 regarding conflicts with Hood’s water wells and
2 treatment facility.

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

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

15 The Appellant points to the Department’s DP P2 Detailed Findings to show that
16 “‘existing land uses’ were treated primarily as physical agricultural and infrastructure
17 uses, not as cultural/community uses such as the Courtland Pear Fair” (Courtland Pear
18 Fair, Appeal Form p. 4). The Appellant claims the Department “never identifies the
19 Courtland Pear Fair as an existing land use or cultural/community resource within the
20 DP P2 analysis” or “show[s] that DCP facilities were sited in a way that avoids or
21 reduces conflicts with Courtland’s community institutions when feasible” (Pear Fair
22 Appeal, p. 6). The Appellant further claims that the Department did not conduct
23 outreach to the Fair and points to the Department’s Final EIR Response to Comments
24 as evidence of this (Pear Fair Appeal, p. 4).⁵⁷ The Courtland Pear Fair is not mentioned
25 in any comments compiled in Volume 2 of the Final EIR ([DCP.D1.1.00221-](#)
26 [DCP.D1.1.00238](#)).

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

⁵⁷ Appellant refers to “the outreach table in Chapter 4” in its appeal form, which is assumed to refer to Final EIR Volume 2 Chapter 4: Response to Comments Tables 4-2 and 4-3 ([DCP.D1.1.00241](#), [DCP.D1.1.00244](#), [DCP.D1.1.00245](#), [DCP.D1.1.00246](#), [DCP.D1.1.00247](#), [DCP.D1.1.00248](#)).

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

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

22 The Department’s DP P2 analysis identifies ECs relevant to reducing conflicts
23 with existing land uses. EC-18 (Minimize Construction-Related Disturbances to Delta
24 Community Events and Festivals) requires construction contractors to coordinate with
25 the Ombudsman to identify community events and festivals that could be disturbed by
26 construction and develop site or activity-specific plans to minimize and avoid
27 construction disturbances such as from noise and traffic ([DCP.AA1.2.00018](#), p. 35). The
28 Department refers to Final EIR Chapters 16 and 17 regarding community events.
29 Chapter 16 notes the Pear Fair as an annual event ([DCP.D1.1.00149](#), p.16), while
30 Chapter 17 outlines its economic impact in the Delta region ([DCP.D1.1.00154](#), p. 28). In
31 addition, the Department stated at the hearing that they will reach out to the Pear Fair
32 again to ensure coordination with them. (February 27, 2026, hearing, timestamp
33 1:43:50). For these reasons, the Council finds that Pear Fair failed to show that the
34 Certification is not supported by substantial evidence that the DCP is consistent with DP
35 P2 regarding efforts to minimize conflicts with the Courtland Pear Fair.

36 Regarding the Appellant’s claim of lack of outreach, evidence in the record
37 demonstrates that staff from Ag Innovations contracted by the Department reached out
38 to Courtland Pear Fair regarding conducting outreach at the event, and their vendor
39 application was rejected ([DCP.AA5.1.00021](#)). This matter was discussed at the
40 February 27, 2026, appeals hearing, and the Courtland Pear Fair stated that a request
41 to participate as a vendor should not “be construed as meaningful engagement” ([Vol. 2,](#)
42 [HT](#) 35:7) and that it commonly receives more vendor applications than the Pear Fair
43 has space for (129:7-8). 2, HT, 35:7) and that it commonly receives more vendor

1 applications than the Pear Fair has space for ([Vol. 2, HT 129:20-21](#)). The Department
2 notes in its written submittal that considering that the Courtland Pear Fair is “not a local
3 agency... any claimed failure to adequately consider comments from the Courtland
4 Pear Fair organizers is not an appealable issue” (Department, Writ. Sub., p. 79). The
5 Council recognizes and appreciates that an email requesting a vendor space at a
6 festival does not demonstrate meaningful outreach and engagement with Fair staff.
7 However, Appellants have not identified evidence in the record that demonstrates that
8 the Courtland Pear Fair provided comments to the Department that were not considered
9 by the Department. Furthermore, Courtland Pear Fair would not constitute a “local
10 agency” under the Government Code.⁵⁸ As such, this is not an appealable issue under
11 DP P2 the Council does not consider it further.

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

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

34 In its Certification, the Department refers to several siting considerations related
35 to avoiding traffic on SR 160 during construction. Specifically, the siting of intakes B and
36 C (as referred to in the Final EIR) will affect properties due to the re-routing of traffic to

⁵⁸ For purposes of DP P2, “local agency” means any county, city, city and county, including any charter county, city, or city and county, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies. ([Government Code, Title 5, Division 2, Part 1, Chapter 2](#))

1 avoid impacts to SR-160 ([DCP.AA1.2.00018](#), p.17). The Department notes that “to
2 minimize traffic on the local Delta roadways and specifically on SR 160, and to minimize
3 the land requirements and footprint of materials storage areas at the individual intake
4 sites, dedicated construction support facilities (e.g., the off-site concrete batch plants)
5 would be incorporated into the [DCP]” ([DCP.AA1.2.00018](#), p.23). The Department notes
6 that the rationale for minimizing SR 160 traffic is “due to its proximity to Delta
7 communities along the Sacramento River and the route’s location on top of a levee”
8 ([DCP.AA1.2.00018](#), p.23).

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

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

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

1 with DP P2 regarding efforts to reduce traffic impacts from project siting that result in a
2 conflict with the Courtland Pear Fair.

3 **(e) Conclusion**

4 For the reasons described above, the Council finds that the Commission, Pear
5 Fair, County of Sacramento, and San Joaquin County have failed to meet their burden,
6 and that there is substantial evidence in the record to support the Department’s finding
7 that the DCP is consistent with DP P2 regarding avoiding or reducing conflicts with land
8 uses in the Legacy Communities of Hood and Courtland.

9 **vi. Conflicts with lower-income, minority, and**
10 **environmental justice communities**

11 SF Baykeeper claims that construction and operational impacts of the DCP will
12 be disproportionately borne by “lower-income communities, minority communities,
13 communities with a significant proportion of people for whom English is not a first
14 language, California Tribes, and environmental justice communities,”
15 ([DCP.V2.14.00058](#); [SF Baykeeper, Appeal](#), p. 12.). Appellant alleges that there is no
16 substantial evidence in the record demonstrating that the Department will address or
17 reduce the harm to environmental justice communities from DCP construction and
18 operations ([SF Baykeeper, Appeal](#), p. 13).

19 City of Stockton argues that alternative sites that would avoid and minimize
20 impacts to Delta communities were not considered by the Department (City of Stockton,
21 Appeal, pp. 35-36) alleging that the expectation of Delta residents and public agencies
22 was that the Department would re-evaluate intake locations when Governor Newsom
23 directed the Department to re-assess the project in 2019 (City of Stockton, Appeal,
24 p.35).

25 The Department’s Certification outlines public involvement efforts to address
26 siting conflicts, including targeted outreach for environmental justice communities.
27 Activities—detailed in the Accountability Action Plan, Public Outreach documents
28 ([DCP.AA1.2.00001](#), Section 4.7), and Appendix I2 of the CER ([DCP.D4.3.00045](#))—
29 included statewide scoping meetings and notifications to over 500 organizations in Delta
30 and Southern California ([DCP.AA1.2.00018](#), p. 30). The Department prioritized
31 engagement with disadvantaged groups, such as communities of color and low-income
32 residents ([DCP.AA1.2.00018](#), p. 31).

33 Further engagement is described through the SEC, Community Survey, and
34 Accountability Action Plan. The SEC, made up of 18 members from various Delta
35 communities, helped guide facility siting to avoid land use conflicts, especially with
36 farmland ([DCP.AA1.2.00018](#), pp.31-32). SEC feedback led to Alternative 5, the Bethany
37 Reservoir Alternative, designed to lessen project impacts ([DCP.AA1.2.00018](#), p. 70;
38 [DCP.D4.3.00045](#), p. 4). Technical memoranda ([DCP.D4.1.00063](#); [DCP.D4.1.00112](#))
39 summarize steps to minimize effects on community alignments and document impact
40 reduction methods ([DCP.D4.1.00112](#), Table 1).

1 impede the implementation of the Sacramento-San Joaquin Delta National Heritage
2 Area Management Plan 2020-2035 (“Management Plan”). Appellant argues using
3 testimony from the water rights hearing that the construction and operations of the DCP
4 will “irreparably change and degrade the unique character of the Delta,” particularly as
5 an NHA, and that the Department has not sited facilities to avoid or reduce this conflict
6 ([DCP.V2.5.00036](#); [County of Sacramento, Appeal](#), p. 54). The Appellant further
7 contends based on testimony from Dr. Nancy Morgan, that the DCP “poses substantial
8 and compounding threats to the mission, vision, and goals articulated in the
9 [Management Plan], severely curtailing the NHA’s ability to implement key strategies
10 across preservation, interpretation, and stewardship” ([DCP.V2.5.00010](#), [County of](#)
11 [Sacramento, Appeal](#), p. 53). Appellant contends that the DCP presents “irreconcilable
12 conflicts with the Delta NHA as a landscape of national significance” ([County of](#)
13 [Sacramento, Appeal](#), p. 52) ... “and will impede implementation of the Management
14 Plan and attainment of its objectives for historic preservation, tourism and recreation
15 development, and economic development activities” ([DCP.V2.5.00036](#), p. 6). In its
16 written submission, Appellant states that the Department recognizes that the NHA
17 designation for the Delta “is expected to further develop the brand identity of the region
18 and help boost tourism providers and the local tourist economy” ([DCP.AA1.2.00018](#), p.
19 61), but that the Department “never analyzes how the DCP will conflict with this existing
20 use and therefore ... cannot show that its consistency determination is supported by
21 substantial evidence.” (Combined, Writ. Sub., p. 47)

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

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

1 issue, the record evidence shows how the Department made efforts to minimize
2 conflicts caused by stockpiles—particularly in the tables found in Final EIR Appendix
3 18D ([DCP.D1.1.00160](#)), which detail visual characteristics and impacts. Additional
4 aesthetic MMs are proposed, including MM AES-1a, which calls for temporary visual
5 barriers at construction areas with direct line-of-sight to sensitive receptors, such as
6 locations within the CRP ([DCP.D1.1.00156](#), p. 18-95) (Department, Writ. Sub., p. 34).

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

16 **ix. Conflicts with water quality**

17 Appellants City of Stockton, SF Baykeeper, and San Joaquin County assert that
18 the construction and operation of the DCP will create water quality conflicts related to
19 salinity and bromide concentrations near the City of Stockton’s drinking water intake,
20 and related to the proliferation of CHABs throughout the Delta.

21 In its appeal, the City of Stockton raises concerns regarding the Department’s
22 use of a threshold of 250 mg/L for its salinity impacts analysis, which is above the City
23 of Stockton’s 110 mg/L operational threshold and will likely be exceeded more often
24 under DCP operation (City of Stockton, Appeal, p. 33; citing [DCP.V2.3.00020](#), pp. 4, 6-
25 7)⁵⁹. Appellant argues that the Department provides only long-term averages and that
26 the Department incorrectly calculated summary statistics, so there is insufficient data in
27 the record to determine the full extent of salinity impact to Stockton’s water supply (City
28 of Stockton, Appeal, p. 33; citing [DCP.V2.3.00020](#), pp. 6-7). The cited record material is
29 water rights hearing testimony wherein Appellant argues that the Department’s
30 averaging and summarizing of model results don’t reflect the real-time operations and
31 impacts that would impact Stockton water quality and water management
32 ([DCP.V2.3.00020](#)). Also, the testimony cited explains that the Department’s DSM2
33 model results for monthly average chloride concentrations shows that DCP is likely to
34 increase the amount of time that the water at Stockton’s intake exceeds 110 mg/L
35 chloride by 2-6% ([DCP.V2.3.00020](#), pp. 7-9). City of Stockton claims that the
36 Department does not provide sufficient information to determine that the DCP will not
37 increase bromide concentrations at Stockton’s intake, while a 5% increase in bromide
38 concentrations would impact the City’s water supply ([DCP.V2.3.00020](#), pp. 8-9). City of
39 Stockton also alleges that the Department’s calculations for bromide may not be based

⁵⁹ City of Stockton’s appeal incorrectly cites to [DCP.V2.3.00022](#), but this is corrected to [DCP.V2.3.00020](#) in its written submission.

1 on an accurate method and show increases in bromide concentrations at Stockton’s
2 intake ([DCP.V2.3.00020](#) pp. 8-9).

3 In its written submittal, the Department states that it is more important to
4 understand water quality effects consistently during a given time of
5 year for each water year than to understand water quality changes that may occur
6 within a single day ([DCP.D1.1.00231](#), pp. 10-9-10-13). The Department claims that the
7 City of Stockton has not identified information in the record to support the claim that it
8 alters operations based on sub-daily water quality measurement. The Department
9 further states that the DCP “... would not affect water quality due to increases in
10 chloride and cyanobacteria, bromide, or other constituents,” and, “impact determinations
11 in Chapter 9 [of the Final EIR: Chapter 9, Section 9.3.3] demonstrate that the project
12 would not cause the loss of adequate surface water supply of suitable quality water for
13 the City [of Stockton].” ([DCP.AA1.2.0018](#), p. 85). The Department references a
14 thorough analysis of water quality-related impacts, “including modeled changes in
15 boron, bromide, chloride, organic carbon, mercury, and selenium concentrations at the
16 City’s drinking water intake at Empire Tract” ([DCP.AA1.2.0018](#), p. 85; [DCP.D1.1.00064](#)
17 p. 9-40, [DCP.D1.1.00064-DCP.D1.1.00098](#)). The Department also references Final EIR
18 Chapter 9, Water Quality analysis results and states, “based on these impact
19 assessment determinations, adverse changes in the vicinity of Stockton diversion
20 facilities is not expected.” ([DCP.AA1.2.00019](#), p. 30).

21 In its appeal, City of Stockton also argues that the DCP would increase the
22 likelihood of CHABs at its drinking water intake based on the Department’s analysis
23 showing increased water temperatures due to climate change (City of Stockton, Appeal,
24 pp. 18, 33). Appellant also cites to CPOD water rights hearing testimony, arguing that
25 the Department did not consider impacts beyond 2040 and incorrectly modeled tidal
26 hydrodynamics, resulting in an incorrect determination by the Department that
27 residence times would not change ([DCP.V2.3.00020](#), pp. 9-10; [DCP.V2.3.00020](#), pp. 4,
28 6-7, 9-10; [DCP.V2.12.00002](#), p. 5).

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

36 In its appeal, San Joaquin County argues that the Department has not analyzed
37 the hydrodynamic impact of the mitigation restoration that is required by its Incidental
38 Take Permit. This Appellant asserts that a large portion of this mitigation will consist of
39 tidal habitat, based on the species affected based on the list of species, impact types,
40 and mitigation type, and acres ([DCP.V2.12.00005](#), pp. 62-63); and claim that the
41 Department has not analyzed the “attendant effects” on water users in the Delta and
42 that tidal wetland restoration can increase water residence time which is good for

1 beneficial fish productivity but also provides conditions under which CHABs grow well
2 ([DCP.V2.12.00005](#), p. 63).

3 The Department's assessment of CHAB impacts in the Certification cites its own
4 analyses, which indicate that the DCP is not anticipated to cause significant increases in
5 Delta salinity or residence time, nor a decline in Delta water quality—including any rise
6 in the frequency or severity of CHABs. Furthermore, negative effects concerning
7 CHABs near the City of Stockton diversion facilities are considered unlikely
8 ([DCP.AA1.2.00019](#), p. 30; [DCP.D1.1.00064](#)). The Department notes that the impact of
9 channel velocity on CHABs is not yet fully understood within current research. Appendix
10 9E of the Final EIR predicts minimal changes in water temperature between June and
11 November ([DCP.AA1.2.00019](#), p. 26; [DCP.D1.1.00072](#)). Additionally, the Department
12 references its 2040 water quality analysis, which evaluates modeled temperature
13 differences in relation to CHABs. This analysis concludes that while an earlier onset of
14 CHAB blooms may occur, blooms are likely to persist with similar or increased
15 frequency throughout the study area ([DCP.AA1.2.00019](#), p. 29; [DCP.D1.1.00085](#), pp. 6-
16 7).

17 In summary, City of Stockton and the Department fundamentally disagree on
18 whether there are siting conflicts associated with locating the DCP intakes upstream of
19 Stockton's water intake and further disagree regarding the extent and significance of
20 those conflicts. Multiple Appellants also assert that impacts related to CHABs will result
21 from degraded water quality. While the Council does not dispute that the issues brought
22 forth by Appellants have the potential impacts, water quality does not represent an
23 existing or planned land use regulated by DP P2. As a result, the Council finds that City
24 of Stockton, SF Baykeeper, and San Joaquin County have failed to meet their burden,
25 and that there is substantial evidence in the record to support the Department's finding
26 that the DCP is consistent with DP P2.⁶⁰

27 **x. Considering comments from the Commission and local**
28 **agencies**

29 Appellants the Commission, County of Sacramento, Sac Sewer, and City of
30 Stockton all allege that the Certification and record do not support the Department's
31 finding that it considered comments from the Commission and local agencies as
32 required by DP P2. The Commission's appeal notes that it recommended the EIR
33 include mapped acreage for all affected areas (Commission Appeal Attachment B, p. 3).
34 While the Final EIR presents this information in tables and appendices, the Commission
35 finds it difficult to interpret holistically (Commission Appeal Attachment B, p. 3). The
36 Commission does not directly engage with evidence summarized in the Department's
37 Certification in DP P2 Attachment 1 Tables 2–7 ([DCP.AA1.2.00018](#)), which are intended

⁶⁰ The Council acknowledges that water quality concerns at the City of Stockton's intake are currently being addressed in the Department's CPOD petition before the SWRCB. It is anticipated that these issues will be resolved through that process, particularly as they pertain to any harm to existing water users, including Stockton.

1 to demonstrate consistency with DP P2 requirements. In its written submission, the
2 Commission asserts that narrowly defined project objectives limited consideration of
3 meaningful alternatives and references Final EIR comments and Table 7 in DP P2
4 Attachment 1 (Commission, Writ. Sub., p. 8; citing [DCP.D1.1.00241](#), p. 20;
5 [DCP.AA1.2.00018](#), pp. 93–113).

6 **(a) Appellants' claims**

7 In its appeal, the County of Sacramento claims that the Department did not
8 "meaningfully address County comments" ([County of Sacramento, Appeal](#), p. 58). The
9 County refers to an entry in DP P2 Attachment 1 Table 3 ([DCP.AA1.2.00018](#), p. 66),
10 stating that its comment about how construction of the Twin Cities Complex would
11 impact noise, dust, and traffic at CRP was "under-summarized" ([County of Sacramento,](#)
12 [Appeal](#), p. 58). Furthermore, the County notes that CRP is omitted from the entry
13 discussing conflicts between tunnel shaft siting and recreation as an existing land use in
14 Table 7 ([DCP.AA1.2.00018](#), p. 98). The County also critiques the Department's
15 Consistency Certification for stating—without referencing any record evidence—that
16 "substantial evidence in the record demonstrates that the tunnel shafts will have minimal
17 conflicts with the existing recreational uses" ([County of Sacramento, Appeal](#), p. 58).

18 Sac Sewer's appeal claims that the Department did not sufficiently consider its
19 concerns about coordination and consultation, especially regarding potential impacts to
20 Harvest Water, despite Sac Sewer submitting extensive comments and technical
21 reports ([Sac Sewer, Appeal](#), pp. 48–49; citing [DCP.V3.3.00033](#)). Sac Sewer
22 acknowledges that the Department included its feedback in summary tables
23 ([DCP.AA1.2.00018](#), Tables 2–7, pp. 57–113; [DCP.AA1.2.00019](#), Tables 1-6, pp. 9–40),
24 but asserts that the responses failed to address coordination issues and were
25 dismissive of Sac Sewer's concerns and permit obligations ([Sac Sewer, Appeal](#), pp. 49–
26 50).

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

1 Department disregarded its expert evidence submitted during the water rights hearing,
2 which, according to Appellant, exposes deficiencies in the EIR as supporting evidence
3 for its Certification (City of Stockton, Appeal, p. 39).

4 In their combined written submittal, County of Sacramento, Sac Sewer, and City
5 of Stockton restate their claims, contending that the Department failed to “[consider]
6 comments from local agencies and the Delta Protection Commission” as mandated by
7 DP P2 (Combined, Writ. Sub., p. 32). They emphasize that the Commission urged the
8 Department to examine alternative approaches such as strengthening Delta levees,
9 dredging channels, and investing in measures to boost water use efficiency and
10 recycling (Combined, Writ. Sub., p. 32). The written submittal further develops City of
11 Stockton’s position by arguing for the inclusion of water rights hearing testimony,
12 maintaining that evidence presented during the hearing forms part of the certified record
13 and reveals that the Certification lacks substantial supporting evidence. Appellants
14 contend that relying exclusively on the Final EIR to consider comments of the
15 Commission and local public agencies does not suffice, as expert testimony highlights
16 shortcomings in the Final EIR’s analysis as evidence supporting the Certification
17 (Combined, Writ. Sub., p. 33).

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

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

40 Department responses summarize Final EIR analyses but do not explicitly
41 address DP P2 or detail efforts to avoid or reduce land use conflicts. The DP P2
42 Considerations column provides context regarding comment responses but lacks

1 substantive resolution to several DP P2-specific issues. The Department claims that
2 input from the Commission and local agencies was used to assess existing land use
3 conflicts in DP P2 Attachment 1 ([DCP.AA1.2.00018](#), Table 4, Table 8). Table 8 offers a
4 summary of potential conflicts and MMs, asserting that conflicts were avoided where
5 possible and reduced through ECs when avoidance was not feasible
6 ([DCP.AA1.2.00001](#), p. 165). The separation of public comments from DCP siting
7 impacts makes it unclear how public input influenced conflict reduction measures
8 ([DCP.AA1.2.00018](#), p. 91, pp. 93–113).

9 During the hearing, the Department consistently asserted that input from water
10 rights hearing testimony was reviewed during the development of the Certification.
11 Additionally, Councilmember Ann Patterson raised a question to the Department’s
12 attorney regarding the distinction between considering a comment and merely
13 acknowledging it. In response, the attorney stated, “We consider them and address
14 them ... All of that information was considered by the Department in reaching its
15 conclusions in the Certification.” The attorney further clarified, “Unlike CEQA, the
16 Certification process doesn’t require a comprehensive response to every comment
17 received. What is required is that we and the experts we are working with have taken
18 the comments into consideration in formulating our conclusions that are set forth in the
19 Certification,” ([Vol. 2, HT](#) 90:11-91:5).

20 **(c) Conclusion**

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

34 **xi. Conflicts with recreation**

35 Appellants County of Sacramento, the Commission, City of Stockton, SDWA, and
36 Steamboat Resort all challenge aspects of the Department’s DP P2 Certification related
37 to recreation.

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

39 The County of Sacramento asserts that the siting of the DCP will interfere with
40 recreational activities such as hiking, birding, photography, paddling, boating, and

1 agritourism, given the proximity of the TCC to the CRP and SLNWR ([County of](#)
2 [Sacramento, Appeal](#), p. 47). The anticipated impacts include restricted access,
3 increased noise, dust, visual disturbances, diminished air quality, ground vibrations, and
4 construction-related traffic. Separate concerns are offered regarding effects on wineries,
5 commercial activity, and agritourism ([County of Sacramento, Appeal](#), pp. 50–51), with
6 supporting references to Amber Veselka’s water rights hearing testimony
7 ([DCP.V2.5.00025](#)). The Commission contends that the DCP does not comply with DP
8 P2, stating it results in “disruption of the [Delta’s] secondary economic driver, land and
9 water-based recreation” (Commission, Appeal. p. 1). The City of Stockton maintains that
10 “the DCP would increase the likelihood and severity of CHABs at Stockton’s drinking
11 water intake, which would affect Stockton’s ability to utilize water diverted therefrom and
12 would impact recreational activities in the central Delta, including at the Stockton
13 waterfront ([DCP.V2.3.00022](#), pp. 9-10; [DCP.V2.12.00002](#), p. 5). San Joaquin County
14 argues that the DCP will adversely affect recreation, offering examples such as RTM
15 disposal sites and concrete batch plants. Appellant claims that recreational concerns
16 receive minimal attention in the Department’s Certification ([DCP.AA1.2.00001](#)). SDWA
17 asserts in its appeal that “there will also be continuous disturbance from operation and
18 maintenance of the tunnel. The remoteness of these areas lends greatly to their value
19 for habitat and recreational hunting. Investments already made in habitat for
20 environmental enhancement, mitigation, hunting, bird watching, and wildlife-friendly
21 farming will be greatly devalued by the DCP siting and other impacts.” ([SDWA, Appeal](#),
22 p. 31) Appellant further notes that “the proposed siting goes through portions of the area
23 of greatest use by waterfowl and includes significant acreage of cropland winter-flooded
24 for agricultural purposes and areas flooded for habitat and hunting purposes. Numerous
25 hunting clubs and hunting group areas are concentrated in the impacted area,” and list
26 affected locations ([SDWA, Appeal](#), p. 32).

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

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

10 The record provides evidence that conflicts with recreation and agritourism have
11 been avoided or reduced where feasible. The Department’s DP P2 Attachment 1 clearly
12 outlines the considerations made when selecting sites and when it avoided conflicts if
13 possible ([DCP.AA1.2.00018](#), pp. 20-28). When conflicts cannot be avoided, the
14 Department points to programs like the CBP to identify and implement commitments to
15 help protect and enhance the cultural, recreational, natural resource, and agricultural
16 values in the Delta. The Department also points to MMs to reduce impacts from noise
17 and traffic and to analysis in the record that shows less than significant impacts to
18 recreation ([DCP.AA1.2.00001](#), pp.13). For this reason, the Council finds that the
19 Commission, County of Sacramento, and SDWA have failed to meet their burden, and
20 that there is substantial evidence in the record to support the Department’s finding that
21 the DCP is consistent with DP P2 regarding potential conflicts with recreation and
22 agritourism uses.
23

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

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

35 The Department’s Certification acknowledges that noise is an indirect effect
36 potentially leading to conflicts with existing land uses, such as parks
37 ([DCP.AA1.2.00001](#), p.13). However, it clarifies that DP P2 does not mandate the
38 preservation of all existing uses; rather, it requires avoidance or reduction of conflicts
39 where feasible ([DCP.AA1.2.00001](#), p.13). To address those issues, the Department
40 references Final EIR MM NOI-1, Develop and Implement a Noise Control Plan, as its
41 primary strategy for minimizing conflicts with current uses ([DCP.AA1.2.00001](#), p.13).
42 Appellant notes that the resort is located approximately two miles from the proposed
43 intakes. According to the Final EIR Chapter 24, Noise and Vibration, the noise study

1 area included a two-mile radius around the planned above-ground construction sites
2 and new infrastructure, placing Steamboat Slough outside of the zone of anticipated
3 impact ([DCP.D1.1.00188](#), pp. 3, 5).

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

12 **(c) Impacts of hydrological conditions on existing**
13 **recreational activities**

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

24 The record shows that 42 to 94 barge trips per intake are planned for material
25 transport and geotechnical activities, with no more than two upstream and two
26 downstream trips daily. Work at each intake will be staggered by at least one year
27 ([DCP.D1.1.00104](#), p. 55). Final EIR Chapter 20, Transportation, states that vessel
28 passage will not be blocked, river flow changes will not restrict access, and construction
29 barge traffic will be prohibited on weekends ([DCP.D1.1.00168](#), pp. 2, 29). The
30 Department finds the impact on marine transport to be minor due to the limited use of
31 barges and other vessels for construction ([DCP.D1.1.00168](#), p. 65). Final EIR Chapter
32 17, *Socioeconomics*, includes a table listing recreational resources that may face
33 disruptions or reduced quality during construction; while some recreational sites offering
34 boating, angling, and other day-use activities could be affected, Steamboat Resort is not
35 included ([DCP.D1.1.00154](#), p. 72).

36 The Department has clearly defined the number of daily barge trips, confirmed
37 that those trips will not take place on weekends when recreational use is highest, and
38 ensured that river flows will be maintained for continued access. The impact on marine
39 transport is anticipated to be minor ([DCP.D1.1.00104](#), p. 55; [DCP.D1.1.00168](#), pp. 2,
40 29, 65). For these reasons, the Council finds that Steamboat Resort failed to meet its

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

3 **(d) Enforceable mitigation or restrictions on**
4 **construction methods**

5 Steamboat Resort asserts that “no enforceable mitigation or restrictions on
6 construction methods, including barge use, are included, even though construction
7 methods cannot be controlled through bid documents at this stage of project approval”
8 (Steamboat Resort, Appeal, p. 3).

9 The Certification identifies MM AQUA-1b: *Develop and Implement a Barge*
10 *Operations Plan* ([DCP.AA1.2.00001](#), p. 160). This measure requires any construction
11 contractor proposing to use barges to develop a detailed barge operations plan
12 ([DCP.D1.1.00104](#), p. 66). The plan would be part of a comprehensive traffic control
13 strategy with the U.S. Coast Guard for major channels. Barge operation plans must
14 address potential issues such as bank erosion, loss of aquatic vegetation from
15 excessive wake, sediment disturbance affecting turbidity, hazardous spills, and material
16 spillage ([DCP.D1.1.00104](#), p. 66). Barge operators are required to operate vessels
17 safely to avoid significant impacts on Delta aquatic resources, report any disturbance or
18 damage to a project biological monitor, and comply with all other relevant plans
19 ([DCP.D1.1.00104](#), p. 67).

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

26 **(e) Conclusion**

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

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

35 Appellants Commission, Pear Fair, County of Sacramento, Sac Sewer, City of
36 Stockton, and San Joaquin County claim that the DCP will result in various land use
37 conflicts involving the permanent conversion of agricultural lands. These include
38 both general conversion and loss of farmland (Pear Fair, County of Sacramento) and
39 temporary and permanent loss of farmland near the intakes, at the TCC, on Roberts

1 Island, and at the Bethany Complex (County of Sacramento, Sac Sewer, City of
2 Stockton, San Joaquin County).

3 **(a) Appellants' claims**

4 Appellant Pear Fair contends that “agricultural operations that surround
5 Courtland will be adversely affected, through land conversion, reduced productivity, or
6 degraded operating conditions, undermining their economic viability,” which could
7 impact Fair sponsorships and continued operations (Pear Fair Appeal Form, p. 5). In
8 their written submittal, Courtland provides additional evidence to support this claim,
9 including Final EIR Chapter 14 ([DCP.D1.1.00126](#), pp. 1–4), which states that the DCP
10 will affect up to approximately 4,753 acres, permanently convert agricultural land to
11 conveyance and mitigation uses, and result in the removal of approximately 61 to 93
12 structures located in rural agricultural areas ([DCP.D1.1.00126](#), p. 2).⁶¹

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

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

⁶¹ Note that the acreage cited by Appellant is the highest affected acreage under Alternative 2a; the range across alternatives is 2,667 to 4,753 acres, and all alternatives were determined to be less than significant in the table cited ([DCP.D1.1.00126](#) pp. 1–2).

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

7 **(b) Department's response to claims**

8 The Department's Certification states that land use conflicts were avoided when
9 possible, but that due to the nature of the project, not all conflicts could be eliminated
10 ([DCP.AA1.2.00001](#), p.177). The Certification further identifies two MMs to reduce siting
11 conflicts with agricultural lands. The first is MM AG-1: *Preserve Agricultural Land*, which
12 requires that Important Farmland be mitigated at an acreage ratio of 1:1, with
13 replacement land matching or exceeding the quality of what was permanently lost (e.g.,
14 Prime Farmland replaces Prime Farmland) ([DCP.AA1.2.00001](#), p. 42). The second is
15 MM AG-3: *Replacement or Relocation of Affected Infrastructure Supporting Agricultural*
16 *Properties*, which requires the DCP to be modified as much as feasible to avoid impacts
17 to irrigation or drainage infrastructure servicing farmland outside the construction area
18 ([DCP.AA1.2.00018](#), p. 43). The record indicates that infrastructure sizing was based on
19 design and engineering constraints, and facility locations were limited due to
20 environmental resource concerns. Nonetheless, impacts to agriculture were minimized
21 when possible ([DCP.D1.1.00135](#), p. 8). For example, the elimination of the intermediate
22 forebay (proposed in some project alternatives, but not the Bethany Alignment) avoided
23 the loss of approximately 200 acres of land ([DCP.D1.1.00135](#), p. 8). Another example
24 considered is the reduction in the number of tunnel shafts and launch shaft sites for the
25 DCP ([DCP.D1.1.00135](#), p. 9). The record also supports that for areas without
26 permanent infrastructure, but where permanent impacts may occur (e.g., temporary
27 concrete slabs compacting peat soils), agronomic methods will be employed to
28 minimize effects and restore the agricultural potential of disturbed farmland
29 ([DCP.D1.1.00133](#), p. 26).

30 **(c) Conclusion**

31 The record supports the Department's finding in the Certification that the
32 Department avoided conflicts with existing land uses where feasible. When land use
33 conflicts cannot be avoided, the Department applies mitigation measures MM AG-1, MM
34 AG-2, and MM AG-3 described above. For these reasons, the Council finds that the
35 Commission, Pear Fair, County of Sacramento, Sac Sewer, City of Stockton, and San
36 Joaquin County have failed to meet their burden, and that there is substantial evidence
37 in the record to support the Department's finding that the DCP is consistent with DP P2
38 on the issue of conflicts with agricultural use.

1 **xiii. Traffic, transportation, and Reuseable Tunnel Material**
2 **conflicts**

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

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

8 Pear Fair argues that construction activities will disrupt traffic patterns during its
9 annual event and asserts that these impacts were not evaluated in the Department’s DP
10 P2 analysis of existing land uses ([Pear Fair, Appeal](#), p. 5). Pear Fair also claims the
11 DCP will significantly affect SR-160 and River Road, potentially compromising access to
12 the Fair, and notes that the event was overlooked as an existing land use in the DP P2
13 analysis ([Pear Fair, Writ. Sub.](#), p. 2). Additionally, Pear Fair contends that SR-160—
14 Courtland’s principal access route—will be physically rerouted and permanently
15 realigned, which could impact community access, agriculture, tourism, and cultural
16 events throughout the 13-year construction period ([Pear Fair, Writ. Sub.](#), p. 2). Pear
17 Fair’s written submittal stresses the significant impacts on SR-160 and River Road, and
18 the permanent realignment of SR-160, asserting that the Department did not consider
19 the ramifications of rerouting this main access route over the long construction period
20 for community access, agriculture, tourism, or cultural events (Pear Fair, Writ. Sub., p.
21 2).

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

33 The Commission asserts that the DCP conflicts with DP P2 by worsening traffic
34 congestion on roads that are already heavily traveled (Commission Appeal, p. 1). The
35 Commission also points to the permanent rerouting of Scenic Highway SR-160 in
36 Hoodin regard to the disruption to businesses and restricted access for both tourists and
37 residents (Commission Appeal Attachment B, p. 1). The City of Stockton argues that the
38 Department did not adequately select the project site to mitigate or prevent air quality
39 conflicts. Appellant claims that increased use of heavy equipment, dredging, demolition,
40 land clearing, and increased traffic—on both paved and unpaved surfaces—will result in
41 elevated air pollution and dust emissions ([DCP.V3.3.00020](#), p. 46). Appellant argues

1 that, even with mitigation, these impacts remain substantial and potentially understated,
2 posing health risks to residents in both private and public spaces ([DCP.V3.3.00020](#), pp.
3 45-48; [DCP.AA1.2.00018](#), pp. 7-26). City of Stockton further states that operations at
4 Lower Roberts Island will degrade air quality in Stockton and nearby areas as a result of
5 increased emissions and dust (City of Stockton Appeal, p.34; citing [DCP.V3.3.00020](#), p.
6 46; [DCP.AA1.2.00018](#), pp. 7-26). Steamboat Resort contends that construction vessel
7 traffic will interfere with waterway navigation and compromise safety for smaller
8 recreational boats, arguing that the DCP is incompatible with DP P2 due to its
9 detrimental effects on established recreational activities (Steamboat Resort Appeal, p.
10 3).

11 In its Certification, the Department clarifies that although the Final EIR analyzes
12 traffic and transportation, these resources are not existing land uses by themselves;
13 instead, conflicts with them may impact physical land uses ([DCP.AA1.2.00018](#), p. 54).
14 The Department responds that, to minimize traffic on local Delta roadways and
15 especially SR-160, and to reduce the footprint of material storage areas at intake sites,
16 dedicated construction support facilities (such as off-site concrete batch plants) will be
17 included in the DCP ([DCP.AA1.2.00018](#), p. 23). Contractors will develop site-specific
18 plans to minimize disturbances, like noise and traffic, and may limit or reroute truck
19 hauling during events, creating traffic management strategies tailored to local festivals
20 ([DCP.AA1.2.00018](#), p. 35). The Department has also adopted MMs—including a
21 Transportation Demand Management Plan and a Transportation Management Plan—to
22 support transportation in Delta communities and reduce conflicts with existing land uses
23 due to changing traffic volumes ([DCP.AA1.2.00018](#), pp. 64, 39-40).

24 In response to concerns about the deterioration of Delta pavement, the
25 Department states it will conduct pre-construction pavement analysis and improve
26 access roads as needed, then remediate them after project completion
27 ([DCP.AA1.2.00018](#), pp. 64-65). Regarding intake locations, the Department notes that
28 these were comprehensively analyzed and alternatives did not meet project objectives
29 or reduce environmental impacts, so further evaluation was not pursued in the EIR
30 ([DCP.AA1.2.00018](#), p. 74). The Department mentions that construction of the north
31 Delta intakes could have temporary effects on tourism due to localized traffic, but
32 construction is scheduled to avoid weekends, when most tourism occurs
33 ([DCP.AA1.2.00018](#), p. 95). Additionally, intake locations on the west side of the
34 Sacramento River were excluded because of limited transportation options and higher
35 potential for disruption ([DCP.AA1.2.00018](#), p. 15). The Certification's DP P2 Attachment
36 1 includes EC-18, which requires contractors to coordinate with the Ombudsman to
37 identify Delta community events that may be disrupted by construction
38 ([DCP.AA1.2.00018](#), pp. 35). The Ombudsman is tasked with working alongside
39 contractors to develop specific plans to avoid disturbance from traffic and noise where
40 feasible ([DCP.AA1.2.00018](#), pp. 35).

41 Considering the binding MMs and ECs described above, the record supports the
42 Department's conclusion that it has reduced traffic and transportation conflicts where
43 feasible. The Council finds that Pear Fair, County of Sacramento, and the Commission

1 have failed to meet their burden, and that substantial evidence supports the
2 Department's conclusion that the DCP is consistent with DP P2 as to traffic and
3 transportation conflicts.

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

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

15 The County of Sacramento supports the argument that moving RTM storage to
16 the Twin Cities Complex will not lessen intake construction impacts on Hood and the
17 surrounding area ([DCP.D2.3.00061](#), p. 59). Written submittals from several Appellants
18 discuss RTM impacts near the CRP. San Joaquin County argues that RTM is effectively
19 not reusable and would create a lasting blight, interrupting agricultural and recreational
20 land uses. San Joaquin County further notes that tunnel construction would generate
21 14.4 million cubic yards of permanently stockpiled RTM, with piles up to 15 feet high
22 covering 214–225 acres (San Joaquin County, Appeal, p. 9 citing [DCP.D1.1.00001](#), p.
23 3-118; [DCP.D4.1.00097](#), pp. 23, 27).

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

30 Appellants further dispute the Department's claim that RTM could be used by
31 reclamation districts, citing levee expert CPOD water rights hearing testimony that such
32 material is likely not reusable due to distance and other factors ([DCP.V2.22.00001](#), p.
33 6). The Department responds to these concerns by referencing Final EIR chapters
34 where RTM is discussed at length ([DCP.AA1.2.00018](#), p. 57), and notes that stockpiles
35 were sited to minimize impacts on existing land uses, as required by DP P2. RTM is first
36 mentioned in site selection criteria for tunnel shafts, and shaft sites without public road
37 access were ruled out partly due to RTM transport needs ([DCP.AA1.2.00018](#), p. 18).
38 RTM is referenced in comments from various agencies throughout the Draft EIR
39 ([DCP.AA1.2.00018](#), pp. 57, 61, 66, 81-82, 85). The Department maintains that, where
40 land use conflicts cannot be fully avoided, DP P2 requires actions to reduce conflicts as

1 much as feasible, supported by substantial evidence in the record (Department Writ.
2 Sub., p.61; [DCP.AA2.1.00096](#), p. 36).

3 In the Department’s written submission, the Department alleges that San Joaquin
4 County fails to “confront all the substantial evidence that DWR reduced conflicts with
5 recreational uses when siting RTM stockpiles.” (Department Writ. Sub. p. 74). The
6 Department points to a summary of the substantial evidence that the RTM stockpiles
7 were sited to reduce conflicts with existing land uses provided in (Department Writ.
8 Sub., p. 60). This section addresses the comments that the Commission made
9 regarding the RTM and their permanent impact (Department Writ. Sub., p. 60). The
10 Department further states they will reuse the RTM “to the extent possible” (Department
11 Writ. Sub., p. 61; [DCP.D1.1.00010](#), p. 3-32). The Department’s response also
12 addresses Appellant arguments on transportation of RTM being unfeasible for traffic
13 and air quality concerns (Department Writ. Sub., p. 61; [DCP.D4.1.00023](#), p. 31;
14 [DCP.D4.1.00023](#), p. 32) as well as discussion of agricultural land being used for RTM
15 stockpiles (Department Writ. Sub. p. 27-29). The Department further cites the Council
16 decision from 2022 on Certification C202110 ([DCP.AA2.1.00096](#), p. 36) stating that
17 when land use conflicts exist and a certifying agency determines based on substantial
18 evidence in the record that the “conflicts cannot be avoided altogether, DP P2 requires
19 that a covered action be sited to reduce conflict with existing land uses when
20 feasible” (Department Writ. Sub., p. 61).

21 Based on these record citations, the record supports the Department’s
22 conclusion that it will reduced traffic and transportation conflicts where feasible and
23 Appellants fail to confront all of the Department’s evidence. Thus, the Council finds that
24 San Joaquin County, County of Sacramento, and the Commission have failed to meet
25 their burden, and that substantial evidence supports the Department’s conclusion that
26 the DCP is consistent with DP P2 as to RTM conflicts.

27 **(c) Conclusion**

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

34 **xiv. Tribal consultation**

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

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

8 The Department provides evidence that it conducted tribal consultation and
9 engagement in the Certification ([DCP.AA1.2.00001](#), pp. 27-29; [DCP.D1.1.00205](#);
10 [DCP.D1.1.00206](#)). Specifically, the Department “conducted government-to-government
11 consultation with tribes under two different processes: Public Resources Code section
12 21080.3.1 and the Department’s Tribal Engagement Policy, as described in the Final
13 EIR” ([DCP.AA1.1.00018](#), p. 27).⁶²

14 Regarding whether the consultation was “meaningful,” the Department suggests
15 that meaningful consultation is dependent on whether it made a good faith effort to
16 identify tribal cultural resources, which is discussed in “Principles for the Identification of
17 Tribal Cultural Resources for the Proposed Delta Conveyance Project”
18 ([DCP.D1.1.00209](#), pp. 3-4). The Department states that it “will take into consideration
19 the Tribal perspectives shared through consultation, which has not been a perspective
20 traditionally taken for archaeological or historical architectural resources, when applying
21 the California Register eligibility criteria” ([DCP.D1.1.00209](#), p. 3).

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

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

28 Appellants SF Baykeeper and San Joaquin County argue that tribal cultural uses
29 are existing land uses and the Department inadequately addressed siting impacts to
30 tribal cultural resources and the Delta TCL. SF Baykeeper describes impacts to tribal
31 cultural resources from the DCP and argue that tribal cultural use is an existing use
32 under DP P2 that is inadequately assessed in the Certification ([SF Baykeeper, Appeal](#),

⁶² The Department has engaged in continuous, multiyear consultation during the development of the EIR, reaching out to “121 Tribes in total with invitations to consult on the Delta Conveyance Project and received responses from 13 Tribes requesting consultation on the project...” some of these included sustained engagement ([DCP.AA1.2.00001](#), p. 27; [DCP.D1.1.00206](#)). Consultation meetings included video conferencing, in-person meetings, and site-visits. As of January 2020, the Department “conducted over 150 formal government-to-government Tribal consultation meetings with interested California Tribes affiliated with the Delta and the Delta Conveyance Project’s area as well as several informational meetings to provide Tribal representatives with general updates about the project (see Final EIR Volume 1, Appendix 32A, Tribal Consultation and Engagement Log)” ([DCP.AA1.2.00018](#), p. 27).

1 p.13.). They also claim that the Department is familiar with the “significant and
2 unavoidable impacts on tribal cultural resources and the TCL” the DCP will cause (see
3 [DCP.C.1.00001](#), p. 8-2) and the Department “does not address the evidence before it
4 that construction and operation of the DCP will cause irreparable harm to specific tribal
5 cultural resources and the Delta as a [TCL]” ([SF Baykeeper, Appeal](#), p.13). The Council
6 notes that no specific tribal cultural uses or character-defining features of the TCL are
7 named, identified, or described in the SF Baykeeper appeal.

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

17 In the Certification, the Department describes how it took steps to reduce siting
18 conflicts by meaningful tribal consultation and engagement ([DCP.AA1.2.00018](#), pp. 27-
19 29). Specifically, the Department “conducted government-to-government consultation
20 with tribes under two different processes: Public Resources Code section 21080.3.1
21 and [the Department’s] Tribal Engagement Policy, as described in Final EIR”
22 ([DCP.AA1.2.00018](#), p. 27). The Department noted that these consultations “factored
23 into [the Department’s] finding that the Delta TCL meets the criteria for listing in the
24 CRHR, and thus qualifies as a Tribal cultural resource under CEQA”
25 ([DCP.AA1.2.00018](#), p. 28). Though consultation has ended, the Department is
26 continuing to coordinate with tribes through its Tribal Engagement Policy (Department,
27 Writ. Sub., p.73). In its written submittal, the Department describes two documents
28 developed through tribal coordination: the Tribal Cultural Resources Management Plan
29 Part 1: Avoidance Phase ([DCP.X2.1.00017](#)) and the Heritage Resources Management
30 Plan, which were developed in accordance with MM TCR-20 1b: Plans for the
31 Management of Tribal Cultural Resources ([DCP.AA2.7.00001](#)) (Department, Writ. Sub.,
32 p. 73).

33 The Department also refers to MM TCR-1a to describe how the Department will
34 construct the DCP in a way that avoids physically disturbing character-defining features
35 of the Delta TCL ([DCP.AA1.2.00018](#), p. 28). Specifically, TCR-1a “requires
36 preconstruction identification and avoidance of archaeological resources of tribal
37 significance, if feasible. The measure requires [the Department] coordinate with
38 affiliated tribes to inform project design refinements to avoid or minimize, whenever
39 feasible, physical disturbances to character-defining features of the Delta Tribal Cultural
40 Landscape, including Native American archaeological resources” ([DCP.AA1.2.00020](#), p.
41 36). The Department will “conduct site-specific surveys, in coordination with affiliated
42 Tribes” where “Native American archaeological resources, ceremonial sites, or other

1 character-defining features have been identified” and based on the results of those
2 surveys, design or redesign facilities to avoid resources ([DCP.D1.1.00205](#), p. 46).

3 The Department acknowledges efforts have already been made in planning to
4 identify locations where construction could damage known ethnohistorical or
5 archaeological locations and implementation of MM TCR-1a will further avoid impacts
6 through design adjustments ([DCP.AA1.2.00018](#), p. 28).⁶³ As an example, the
7 Department notes that “access roads related to one or more of the north Delta intakes
8 are in proximity to known mound sites” and it relocated the roads to a safer distance
9 ([DCP.AA1.2.00018](#), pp. 28-29). As another example, “based on previous mapping and
10 consultation with the tribes regarding potential protective buffers, the engineering design
11 team developed options for feasible avoidance near Intake B that both [the Department]
12 and consulting tribes agreed would likely avoid impacts” to a character-defining feature
13 of the Delta TCL ([DCP.AA1.2.00018](#), p.29). Tribal cultural resources identified thus far
14 are confidential records, so it is not possible to evaluate specifically how DCP siting
15 avoided or reduced impacts to character-defining features of the Delta TCL beyond the
16 examples provided (Final EIR 32C Tribal Cultural Resources Identification Report
17 [[DCP1.1.00208](#)]).

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

- 21 • MM TCR-1b: Plans for the Management of Tribal Cultural Resources
22 ([DCP.D1.1.00205](#), pp. 32-46– 32-48)
- 23 • MM TCR-1c: Implement Measures to Restore and Enhance the Physical,
24 Spiritual, and Ceremonial Qualities of Affected Tribal Cultural Resources
25 ([DCP.D1.1.00205](#), pp. 32-48– 32-49)
- 26 • MM TCR-1d: Incorporate Tribal Knowledge into Compensatory Mitigation
27 Planning (Restoration) ([DCP.D1.1.00205](#), pp. 32-49–32-50)

28 The Department’s written submittal (pp. 72-74) asserts “it is not possible to site
29 the tunnel, intakes, and other major features to avoid all impacts on Tribal cultural
30 resources and the Delta TCL” (Department, Writ. Sub., p. 72). However, the Department
31 asserts it made all efforts to reduce and avoid conflicts as discussed in “Efforts to
32 Reduce or Address Siting Conflicts Through Tribal Consultation and Engagement”

⁶³ Regarding the Delta TCL, the Department states: “to avoid impacts through adjusting the design, [the Department] will field-verify the extent of the resource relative to the project’s activity and determine avoidance options” ([DCP.AA1.2.00018](#), p.29). Furthermore, the Department concluded based on Tribal consultation and input from the engineering design team, that “avoidance at certain locations of known archaeological resources is feasible through collaboration with Tribes during the Delta Conveyance Project’s design phase” ([DCP.AA1.2.00018](#), p.29). The Department invited each Tribe to provide information about resources of concern, including location and significance, and members of the project design team met with Tribal representatives to discuss options for adjusting the design to avoid or reduce impacts to these resources, as feasible ([DCP.D1.1.00205](#), p. 32-12) (Department Writ. Sub., p.73).

1 ([DCP.AA1.2.00018](#)). Additional evidence cited in the written submittal includes: the
2 Department’s Tribal Engagement Policy ([DCP.D3.1.04830](#)); Tribal Cultural Resources
3 Management Plan Part 1: Avoidance Phase ([DCP.X2.1.00017](#)); Plans for the
4 Management of Tribal Cultural Resources ([DCP.AA2.7.00001](#)); and identified Tribal
5 Cultural Resources ([DCP.D1.1.00205](#), p. 32-9), among other documents.

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

15 **xvi. Community Benefits Agreements and Community**
16 **Benefits Program**

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

20 The Pear Fair appeal contends that the CBP fails to effectively minimize conflicts,
21 citing that: “the same Detailed Findings outline and depend on a [CBP] and CBAs,
22 including those related to Courtland, yet none directly identify or safeguard the
23 Courtland Pear Fair.” Additionally, Appellant notes, “Table 4-1 lists draft CBAs for the
24 Courtland Fire Protection District (replacement fire station) and the Courtland Town
25 Association (funding plus an endowment for ... operations) but does not include a CBA
26 for the Pear Fair or any comparable cultural entity.” The appeal refers to Table 4-1,
27 which is the Draft CBA table included in the Department’s Certification
28 ([DCP.AA1.2.00001](#), pp. 18-19).

29 SF Baykeeper argues that the Department’s reliance on the CBP fails to address
30 or mitigate harms to environmental justice communities, calling the CBP “an incomplete
31 and illusory promise” ([SF Baykeeper, Appeal](#), pp. 12-13). Their written submission
32 asserts that the CBP and related MMs do not adequately compensate for impacts on
33 environmental justice communities, tribal and cultural resources, CHABs, and recreation
34 (SF Baykeeper, Writ. Sub., pp. 8-10). SF Baykeeper also contends that projected short-
35 term economic benefits from non-agricultural jobs are speculative and insufficient to
36 offset potential negative effects on the Delta economy (SF Baykeeper, Writ. Sub., p.
37 10).

38 San Joaquin County argues that the CBP is based on unexecuted, non-binding
39 agreements that do not demonstrate enforceable consistency with DP P2 (San Joaquin
40 County, Appeal Form, p. 17). Appellant cites the Certification’s DP P2 Attachment 1,
41 which shows draft agreements with community entities, but contend these are

1 contingent. Its written submittal estimates CBP commitments at \$89 million, while the
2 Department caps the fund at \$200 million (San Joaquin County, Writ. Sub., p.14).
3 Appellant notes that most tentative CBP recipients are located outside the Delta and
4 asserts the CBP lacks a clear analytical link to DP P2 impacts (San Joaquin County,
5 Writ. Sub., pp. 14, 16-17).

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

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

23 Appellants have not identified evidence in the record that would indicate that the
24 CBP and/or CBAs are not adequate tools to reduce conflicts regarding a specific conflict
25 caused by the siting of the DCP. Additionally, Appellants appear to base this argument
26 on an incomplete review of the full record concerning the CBP and CBAs. Therefore,
27 the Council finds that Pear Fair, SF Baykeeper, and San Joaquin County have failed to
28 meet their burden, and that there is substantial evidence in the record to support the
29 Department’s finding that the DCP is consistent with DP P2 regarding this matter.

30 **xvii. Levee maintenance**

31 Pear Fair and DCC Engineering argue that conflicts resulting from siting the DCP
32 will affect the viability of long-term levee maintenance in the Delta. Appellant Pear Fair
33 argues that any impacts to the Fair could affect the economic viability of community
34 institutions and government-sponsored flood control programs (Pear Fair, Appeal Form,
35 p. 6). Appellant states: “The same cultural and economic networks that sustain the Pear
36 Fair also underlie local assessments and political support for reclamation districts and
37 levee maintenance programs. Long-term erosion of community institutions due to siting
38 conflicts reduces the resilience of these government-sponsored flood control programs
39 that protect people and property in the Delta” (Pear Fair, Appeal Form, p. 6). Appellant
40 refers to impacts on SR-160 and River Road from the DCP, both of which are

1 necessary for levee patrolling (Pear Fair, Writ. Sub., p. 2). No further evidence is
2 provided to support this argument.

3 Appellant DCC Engineering cites to Final EIR Chapter 14, which states that the
4 DCP will lead to "land-use incompatibilities affecting up to approximately 4,753 acres,
5 result in permanent conversion of agricultural land to conveyance and mitigation uses,
6 and require the removal of approximately 61 to 93 structures located in rural agricultural
7 areas" (DCC Engineering, Writ. Sub., p. 3; citing [DCP.D1.1.00126](#), pp.14-1-14-22).
8 DCC Engineering also cites to Final EIR Chapter 17 which "documents permanent
9 conversion of agricultural land, annual agricultural production losses of approximately
10 \$2.8 million to \$5.6 million, and associated reductions in agricultural employment, with
11 impacts concentrated in small, rural Delta communities" (DCC Engineering, Writ. Sub.,
12 p.3; citing [DCP.D1.1.00154](#), pp.17-2). Appellant goes on to argue that because
13 "agricultural operations generate the property values and assessment base that fund
14 Reclamation District operations and maintenance" that "reductions in agricultural
15 acreage, productivity, and economic viability directly undermine local agencies' capacity
16 to maintain levees, drainage systems, and transportation corridors that support existing
17 land uses" (DCC Engineering, Writ. Sub., p. 3).

18 The Department's written submittal claims that allegations related to levee
19 funding are not appealable issues under DP P2, that state and federal funding to
20 maintain Delta levees will continue, and that construction of the DCP may not begin until
21 SWP contractors enter contracts or make arrangements to fully mitigate impacts on
22 local property tax and assessments (Department, Writ. Sub., pp. 78-79). As evidence
23 the Department points to the Water Code, which requires: "[f]ull mitigation of property
24 tax or assessments levied by local governments or special districts for land used in the
25 construction, location, mitigation, or operation of new Delta conveyance facilities" (Wat.
26 Code, § 85089, subd. (b)); (Department, Writ. Sub., p. 78). The Department notes the
27 Appellants' claims that the DCP harms agricultural economics and affects funding for
28 reclamation districts. However, it contends this point is not relevant to DP P2 and cites
29 Chapter 17 of the Final EIR, which found only minor regional economic effects
30 ([DCP.D1.1.00154](#), p. 17-68; Department, Writ. Sub., p. 84).

31 DCC Engineering argues that reclamation districts depend on resources like
32 those needed for DCP construction—such as rip rap, rock, sheetpile, heavy equipment,
33 and trucking—and that exclusive use of these resources by the DCP could negatively
34 impact land uses in the Delta over time. The Appellant describes concerns about long-
35 term harm to the physical landscape, stating this is "directly in conflict with DP P2"
36 (DCC Engineering, Appeal Form, p. 2). In its written submission, Appellant references
37 Final EIR Chapter 3, Project Description, highlighting that the document outlines a
38 roughly 13-year construction period with overlapping phases throughout the Delta.
39 Appellant contends this schedule indicates the DCP will continuously require
40 contractors, equipment, materials, transportation, and marine resources, which would
41 directly compete with reclamation district levee maintenance, emergency response, and
42 flood-control work occurring at the same time. ([DCP.D1.1.00010](#), pp. 19 and 131; DCC
43 Engineering Co., Writ. Sub., p. 3).

1 The Commission claims the DCP is not consistent with DP P2 and places “small
2 Delta communities in serious jeopardy” due to negative impacts from noise, dust,
3 nighttime glare, and emissions (Commission, Appeal, p. 2). Sac Sewer expresses
4 concern regarding construction noise related to processing RTM near Sandhill Crane
5 habitats. Sac Sewer argues that the ensuing noise will affect Sandhill Crane populations
6 and roosting sites, including those managed by Harvest Water ([Sac Sewer, Appeal](#), p.
7 45).

8 According to its Certification, the Department asserts that DP P2 does not require
9 specific MMs or ECs. Nonetheless, the Final EIR for the Delta Conveyance Project
10 includes several chapters that address existing land uses throughout the Delta
11 ([DCP.AA1.2.00018](#), p. 34). Of the two ECs identified, one is dedicated to reducing noise
12 disruptions: EC-18: Minimize Construction-Related Disturbances to Delta Community
13 Events and Festivals. This commitment requires the construction contractor to work with
14 the Ombudsman to create site-specific or activity-specific plans designed to lessen or
15 avoid construction-related noise and traffic when feasible ([DCP.AA1.2.00018](#), p. 35).

16 The Department also explains that noise and vibration impacts are analyzed in
17 Final EIR, Chapter 24, Noise and Vibration. ([DCP.D1.00188](#); Department Writ. Sub. pp.
18 120-121) This chapter incorporates noise standards established by the Department
19 based on expert consensus and input from both local and resource agencies. The
20 Thresholds of Significance section details the rationale and sources behind these
21 standards ([DCP.AA1.2.00018](#), p. 62). The established noise limits account for the
22 Delta’s rural landscape, geographic range, and protected species. Mitigation efforts
23 include measures such as sound insulation, implementing best practices for noise
24 control, using temporary sound barriers, and, if needed, offering voluntary relocation to
25 affected residents. Despite these MMs, the Final EIR recognizes that construction noise
26 will continue to be significant and unavoidable ([DCP.AA1.2.00018](#), p. 68).

27 Additional mitigation steps involve actions prior to construction, ongoing sound
28 level monitoring, and installing noise barriers in locations where sound is expected to
29 exceed daytime or nighttime standards ([DCP.AA1.2.00018](#), p. 43). The construction
30 contractor is also required to collaborate with the Ombudsman to identify community
31 events and festivals that might be impacted by construction. ([DCP.AA1.2.00018](#), p. 35)

32 The Department has provided evidence in the record that describes how noise
33 disturbances are addressed through mitigation, where feasible. It is reasonable to
34 expect cumulative noise impacts over the projected construction period, but DP P2 does
35 not require noise-specific mitigation unless there is direct conflict with existing land uses
36 or land uses described or depicted in city and county general plans. Appellants have not
37 shown that the Department failed to account for noise impacts with respect to land use
38 or project siting. For these reasons, the Council finds that Pear Fair, Steamboat Resort,
39 the Commission, and Sac Sewer have failed to meet their burden, and that there is
40 substantial evidence in the record to support the Department’s finding that the DCP is
41 consistent with DP P2 regarding land use conflicts associated with noise impacts due to
42 siting considerations.

1 **d. DP P2 Conclusion**

2 For all the reasons discussed above, and in light of all the record evidence, the
3 Council finds as follows:

- 4 1. Appellant Sac Sewer showed that the Certification is not supported by
5 substantial evidence in the record and the Council **remands the matter**
6 to the Department to reconsider and avoid or reduce conflicts to the
7 extent feasible between the siting of the TCC and Sac Sewer’s Harvest
8 Water regarding agricultural use, groundwater recharge, and Sandhill
9 Crane habitat uses.
- 10 2. As to all other issues raised by all 10 Appellants under DP P2, Appellants
11 failed to meet their burden, and there is substantial evidence in the record
12 to support the Department’s finding that the DCP is consistent with DP
13 P2. The Council therefore **denies all other DP P2 appeals**.

14 **11. Policy RR P1 (Cal. Code Regs., tit. 23 § 5012.): Prioritization of State**
15 **Investments in Delta Levees and Risk Reduction**

16 The Department finds that Delta Plan Policy RR P1 does not apply to the DCP.
17 Appellant DCC Engineering contends that RR P1 does apply and that the DCP is
18 inconsistent with the policy. For the reasons discussed below, the Council finds that
19 substantial evidence in the record supports the Department’s conclusion that RR P1
20 does not apply to the DCP. Accordingly, the Council **denies the appeal** as follows:

RR P1 Appeal Issue	Appellant	Decision
RR P1 applies to the DCP	DCC Engineering	Denied

21

22 **a. Policy Requirements**

23 RR P1 establishes priorities for Delta levee operations, maintenance, and
24 improvements. Subsection (a) identifies funding for levee operations and maintenance
25 as a priority for all Delta islands and tracts. Subsection (b) outlines the Delta Levees
26 Investment Strategy (“DLIS”), which establishes levee improvement priorities for each
27 Delta island and tract. Subsection (c) outlines requirements for the Department to
28 prepare and present to the Council an annual report on State funds distributed or
29 provided by the Department for levee improvement, operations, and maintenance.⁶⁴

30 RR P1 subsection (d) states:

⁶⁴ The full regulatory text of RR P1 (Cal. Code Regs., tit. 23, § 5011) is available at West Law [using this link](#).

1 “For purposes of Water Code section 85057.5(a)(3) and section 5001(o)(1)(E) of
2 this Chapter, this policy covers a proposed action that involves discretionary State
3 investments in Delta flood risk management, including levee operations, maintenance,
4 and improvements. Nothing in this policy establishes or otherwise changes existing
5 levee standards.” (Cal. Code Regs., tit. 23, § 5012, subd. (d).)

6 **b. Certification**

7 The Certification states that RR P1 does not apply to the DCP because it
8 includes no investment in Delta levees or flood risk reduction through discretionary state
9 investments. Instead, water contractors will fund the DCP. (Certification, Detailed
10 Findings, p. 34) The Department cites to the DCP Final EIR Volume 1, Chapter 2 and
11 DCP Final EIR Volume 2, Common Response 7 to support this claim.
12 ([DCP.AA1.2.00001](#), p. 33) The Certification notes that the DCP will carry out targeted
13 repairs on existing levees to address flood risks, geometry, and historical issues. These
14 improvements will take place at the TCC, Lower Roberts Island, and the proposed
15 intake sites on the Sacramento River. ([DCP.AA1.2.00001](#) p.45)

16 The Certification explains that because the DCP will enable dual conveyance
17 through the Delta, allowing water to be diverted from either the north or south Delta, the
18 existing levees will play a crucial role in the Delta's operation under the modified SWP
19 including the DCP, making their maintenance a continued high priority. The Certification
20 cites Final EIR Volume 2, Common Response 8 and Final EIR Volume 1 Chapter 7,
21 Section 7.1.3.9 to support these claims on continued focus on levee maintenance.
22 ([DCP.AA1.2.00001](#), p. 34, citing [DCP.D1.1.00229](#) p.8-27; [DCP.D1.1.00057](#) p. 7-25])

23 **c. Appeals and Analysis**

24 Appellant DCC Engineering challenges the Department's Certification of
25 Consistency with RR P1, alleging that the policy applies to the DCP, that the DCP will
26 put stress on existing levee systems and operating agencies, and that the Department's
27 statement that the DCP involves no discretionary investment in Delta levees or flood-
28 risk reduction is incomplete and incorrect. ([DCC Engineering Appeal](#), p. 3)The Appellant
29 argues that the Department's finding that RR P1 does not apply is incorrect, as the DCP
30 relies on the existing Delta levee system throughout both construction and operation.
31 ([DCC Engineering Appeal](#), p. 3)) Appellant cites the EIR project description (Final EIR,
32 Chapter 3), claiming the DCP involves numerous changes to Delta levee structures and
33 will compete with local reclamation districts for materials and contractors, resulting in
34 inflationary impacts to their budgets. ([DCC Engineering, Writ. Sub.](#), p. 1, citing
35 [DCP.D1.1.00014](#) p.3-13) The Appellant highlights the significant demand for resources
36 like aggregate base, trucking, import fill, and other materials needed for access
37 improvements and levee construction. ([DCC Engineering, Writ. Sub.](#), p. 2)

38 Additionally, the Appellant claims that the DCP will rely on limited regional
39 trucking services and notes that in-water activities for intake construction are restricted
40 to a three-month period annually, referencing Final EIR, Chapter 3 and Chapter 20.
41 (DCC Engineering Writ. Sub., p. 3-4, [DCP.D1.1.00168](#), [DCP.D1.1.00010](#))Construction

1 is expected to last 13 years. The Appellant contends that this high resource demand will
2 impact improvements to DLIS high priority levees, increasing the risk of levee failure
3 and compromising Delta flood protection and water supply reliability. (DCC Engineering
4 Appeal, p. 3)

5 The Certification states that RR P1 does not apply to the DCP since it includes
6 no investment in Delta levees or flood risk reduction through discretionary State
7 investments. ([DCP.AA1.2.00001](#), p. 34). The Certification, further states that the
8 Covered Action will be funded by water contractors rather than involving
9 discretionary State investments in Delta levees. The Department cites to the Final EIR
10 Volume 1, Chapter 2 and Final EIR Volume 2, Common Response 7 to support this
11 claim. ([DCP.AA1.2.00001](#), p. 33; [DCP.D1.1.00009](#); [DCP.D1.1.00228](#))

12 RR P1 applies to *discretionary* State investments to levees only. The Appellant's
13 statement regarding the necessity of a Certification to address engineering
14 considerations , costs, benefits, and impacts to the state interests is not
15 substantiated even if the DCP depends on the levee system and will put strain on
16 Reclamation Districts construction supply.

17 The Council recognizes that the resource demand issues highlighted by the
18 Appellant may pose a potentially significant challenge for reclamation districts seeking
19 to improve levees in alignment with DLIS priorities and would welcome an opportunity
20 outside of this regulatory process to collaborate with the Department and affected
21 reclamation districts toward a resolution. Nevertheless, while important, these concerns
22 do not present an appealable issue under RR P1. While the DCP includes the limited
23 levee work described in the Certification, it does not involve discretionary investments in
24 levee improvements governed by RR P1. Therefore, the Council finds that RR P1 does
25 not apply to the DCP.

26 **d. RR P1 Conclusion**

27 For the reasons discussed above, the Council finds that Appellant DCC
28 Engineering failed to meet its burden, and that there is substantial evidence in the
29 record to support the Department's finding that RR P1 does not apply to the DCP.
30 Therefore, the Council ***denies the appeal***.

31 **12. Policy RR P3 (Cal. Code Regs., tit. 23, § 5014.): Protect Floodways**

32 The Department finds that Delta Plan Policy RR P3 does not apply to the DCP.
33 Appellant DCC Engineering contends that RR P3 does apply and that the DCP is
34 inconsistent with the policy. For the reasons discussed below, the Council finds that
35 substantial evidence in the record supports the Department's conclusion that RR P3
36 does not apply. Accordingly, the Council ***denies the appeal*** as follows:

RR P3 Appeal Issue	Appellant	Decision
RR P3 applies to the DCP	DCC Engineering	Denied

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a. Policy Requirements

RR P3 states:

“(a) No encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(o)(1)(E) of this Chapter, this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream.” (Cal. Code Regs., tit. 23, § 5014.)

b. Certification

In the Certification, the Department states that RR P3 does not apply to the DCP because it does not include any proposed actions that would encroach in a floodway that is not either a designated floodway or regulated stream ([DCP.AA1.2.00001](#), p. 36, emphasis added) In support of this claim, the Certification describes DCP features that would cross, but not encroach on a floodway that is not either a designated floodway or regulated stream. The Department cites evidence from the DCP CER ([DCP.D4.3.00001](#), pp. Att1-59 - Att1-70) to demonstrate that the conceptual design layout assumes that these activities would not require bridge support piers or abutments within the waterway, and that piers would be placed outside the floodways ([DCP.AA1.2.00002](#), p. 37)

The Certification also addresses the relationship of project- and program-level actions described in the CMP with floodways that are not either a designated floodway or regulated stream. The Certification states that the project-level mitigation sites on Bouldin Island and at the I-5 ponds do not occur within floodways, and that locations of program-level elements of the CMP such as channel margin habitat enhancement and tidal marsh wetland restoration have not been defined. Therefore, at this time it is not possible to identify whether these elements occur within floodways ([DCP.AA1.2.00001](#), p. 37).

c. Appeals and Analysis

Appellant DCC Engineering challenges the Department’s findings, alleging that RR P3 applies to the DCP, that the DCP physically encroaches on levees and floodways, and that such encroachments have the potential to increase flood risk and impair floodway capacity. ([DCC Engineering, Appeal](#), p. 3-4) The Appellant claims that ER P3 applies to any “floodway that conveys floodwaters in the Delta (including natural channels, regulated streams, and levee-lined river reaches).”([DCC Engineering, Appeal](#), p. 2) As a result, the Appellant claims that the Department bases its findings on an overly narrow definition of where the policy applies. The Appellant does not identify a

1 specific location or waterway covered by the policy upon which the DCP would allegedly
2 encroach.

3 RR P3 applies to an “action that would encroach in a floodway that is not either a
4 designated floodway or regulated stream.” (Cal. Code Regs., tit. 23, § 5014) The policy
5 addresses encroachments to specifically designated channels, not to Delta channels as
6 whole. The Certification includes maps identifying the locations of proposed Covered
7 Action facilities and project-level mitigation sites on Bouldin Island and at the I-5 ponds
8 relative to the locations of regulated streams and designated floodways.
9 ([DCP.AA1.2.00005](#), p. 1; [DCP.AA1.2.00006](#), p. 1). According to these maps, no
10 facilities or mitigation sites are located on a designated floodway or regulated stream.
11 Appellant has not addressed the maps provided by the Department in its record and
12 does not identify a specific location or waterway covered by RR P3, upon which the
13 DCP would allegedly encroach, in its appeal. Therefore, the Council finds that RR P1
14 does not apply.

15 **d. RR P3 Conclusion**

16 RR P3 applies to specific channels in the Delta defined in the regulation, not to
17 channels across the Delta as a whole. The Appellant’s statement regarding the
18 applicability of this policy to the DCP is not substantiated by the record. Thus, the
19 Council finds that DCC Engineering failed to meet its burden, and that there is
20 substantial evidence in the record to support the Department’s finding that RR P3 does
21 not apply to the DCP. Therefore, the Council ***denies the appeal.***

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CONCLUSION

25 In light of the whole record, including evidence identified in the Department’s
26 Final Record Index, the Council finds that there is substantial evidence to support the
27 Department’s determination that the following Delta Plan Policies are not applicable to
28 the DCP: DP P1, RR P1, RR P2, RR P3, RR P4 and G P1(c). The Council further finds
29 that Appellants failed to meet their burden, and there is substantial evidence to support
30 the Department’s findings of consistency for the following Delta Plan policies: G
31 P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P2, ER P3, and ER P4.

32 However, Appellants have shown, in relevant part, that the Certification is not
33 supported by substantial evidence with respect to Delta Plan policies ER P5 and DP P2,
34 as follows⁶⁵:

- 35 • Appellant San Joaquin County has shown that the record does not support the
36 finding that the Department fully considered how the DCP could improve the
37 habitat conditions for the golden mussel, and how the Department would avoid or

⁶⁵ For all other issues raised by Appellants under ER P5 and DP P2, the appeals are denied.

1 mitigate improved habitat conditions for the golden mussel in a way that
2 appropriately protects the ecosystem; and
3

- 4 • Appellant Sac Sewer has shown that the record does not support the finding that
5 the DCP's proposed TCC was sited to avoid or reduce a conflict with Harvest
6 Water to the extent feasible.

7 The matter is therefore **remanded to the Department** for reconsideration of the
8 Covered Action as to:

- 9 • Delta Plan Policy ER P5 to fully consider and avoid or mitigate the potential for
10 DCP facilities to improve habitat conditions for the nonnative invasive golden
11 mussel; and
12 • Delta Plan Policy DP P2 to consider and avoid or reduce conflicts between the
13 siting of the TCC and Sac Sewer's Harvest Water regarding agricultural use,
14 groundwater recharge, and Sandhill Crane habitat to the extent feasible.

15 **The appeals are all otherwise denied.** The Department must file a revised
16 certification of consistency addressing the Council's remanded issues with respect to
17 ER P5 and DP P2, prior to proceeding with the Covered Action. (Wat. Code, §
18 85225.25; Cal. Code Regs., tit. 23, §§ 5034, subd (b); 5035.)

19 Pursuant to Water Code Section 85210(h) the Council requests that the
20 Department submit an annual implementation report to the Council as described in
21 Section A(2) above, beginning on March 1, 2028. (Supra, pp. 3-4.)
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EXHIBIT A. COUNCIL RULINGS ON RECORD ADMISSIONS

The Council may supplement the certified record and/or take official notice pursuant to sections 5026 and 5032 of the Council’s appeal procedures. (Cal. Code Reg., Tit. 23, §§ 5026 [Supplemental Record] and 5032 [Official Notice in a Hearing].) The Council will not consider evidence that is not part of the administrative record.

Rulings on Document Admissions Requests:

1. *Delta Protection Commission*

Document	Basis for Request	Ruling
Map 1 – Delta Conveyance Project: A Look at Four Major Impact Areas	23 CCR § 5032	Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 2 – Delta Conveyance Project Intakes: Impacts, Context & Schedule	23 CCR § 5032	Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.

<p>Map 3 – Delta Conveyance Project – Twin Cities/Lambert Road: Impact, Context & Schedule</p>	<p>23 CCR § 5032</p>	<p>Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.</p>
<p>Map 4 – Delta Conveyance Project – Lower Roberts: Impacts, Context & Schedule</p>	<p>23 CCR § 5032</p>	<p>Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.</p>
<p>Map 5 – Delta Conveyance Project – Bethany Complex: Impacts, Context & Schedule</p>		<p>Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.</p>
<p>Map 6 – North Delta Cultural, Recreational Resources Within 1 Mile of Delta Conveyance</p>		<p>Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission</p>

Project Features During Construction		has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 7 – Delta Conveyance Project: Central and South Delta Cultural, Recreational Resources Within 1 Mile of Delta Conveyance Project Features During Construction		Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Appeal Map – DCP by Year: Few Breaks in Construction over 13 years at most locations	23 CCR § 5032	Denied. The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic fact or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Attachment 2 – Technical Analysis – Consistency with GP1(b)(3): Best Available Science Methods Used to Estimate Recreational Use	23 CCR § 5032	Denied. While Attachment 2 is part of the administrative record for a separate administrative proceeding before the Council concerning a different covered action, it does not concern the Delta Conveyance Project. Therefore, it is not relevant to the certification of consistency for the Delta Conveyance Project or this appeal. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

2. Courtland Pear Fair

Document	Basis for Request	Ruling
Sacramento County General Plan – Delta Protection Element (pp. 7-8, 11-13, 13 [DP-24], 27 [DP-63]).	23 CCR § 5032	This document is already part of the record for this certification. (See DCP.3.1.03946.)
California State Assembly Resolution Recognizing the Courland Pear Fair	23 CCR § 5032	Admitted. The Council takes official notice of Members Resolution No. 1646, dated July 31, 2016, by Honorable Jim Cooper. The resolution is an act by a member of the legislative department of the State of California and the fact that Courtland Pear Fair was the subject of the resolution is a fact not reasonably subject to the dispute.

3. Co of Sac/SASD/SCWA

Document	Basis for Request	Ruling
Exhibit. 1 – May 16, 2024 Declaration of Graham Bradner in Support of DWR’s Opposition t Motion for Preliminary Injunction	23 CCR §§ 5026, 5032	Denied. The Council may take official notice of facts that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact for the Council’s official notice but rather request the admission of an entire declaration submitted in court in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, appellant has not established how the declaration is relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that

		document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 2 – July 19, 2024 Declaration of Graham Bradner in Support of DWR’s Ex Parte Application	23 CCR § 5026, 5032	Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather request the admission of an entire declaration submitted in court in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 3 – Transcript of May 31, 2024, Hearing before Sacramento County Superior Court	23 CCR § 5026, 5032	Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather request the admission of a hearing transcript in a court proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of

		<p>the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Exhibit. 4 – Video Record of February 21, 2024, DISB Meeting of Agenda Item No. 6</p>	<p>23 CCR § 5026, 5032</p>	<p>Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

<p>Exhibit. 5 – Video Record of April 22, 2024, DISB Meeting Agenda No. 8</p>	<p>23 CCR § 5026, 5032</p>	<p>Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Exhibit. 6 – Video Record of May 22, 2024, DISB meeting Agenda Item No. 3</p>	<p>23 CCR § 5026, 5032</p>	<p>Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed</p>

		prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 7 – Video Record August 15, 2024, DISB Meeting Agenda item No. 8	23 CCR § 5026, 5032	Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 8 – Video Record of September 12, 2024, DISB Meeting No. 7	23 CCR § 5026, 5032	Denied. The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the

		pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 9 – Hood Community Action Plan (Sept. 2018)	23 CCR § 5026, 5032	This document is already part of the record for this certification. (DCP.AA5.1.00022.)
Exhibit. 10 – Department of Water Resources, New Desalination Facility is Major Milestone for Drought – Smart Infrastructure solutions in the Delta (9/15/25)	23 CCR § 5026	Denied. It is not sufficient for the purpose of section 5026, that the publication existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) In addition, Appellant has not explained how the publication is relevant to this proceeding. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

4. *Steamboat Resort*

Document	Basis for Request	Ruling
Exhibit. 1 Sacramento Conty General Plan – Delta Protection Element (Adopted September 26, 2017)	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.03946)
Exhibit. 2 Delta Economic Sustainability Plan for the	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.2.00547)

Sacramento-San Joaquin Delta, January 19, 2012, Chapters 1, 8, and 11, pp. 17-18, 147-170, 195-199, 273-275		
Exhibit. 3 Delta Conveyance Design and Construction Authority, Barge Transportation Study Technical Memorandum (Final Draft, December 23, 2021) pp. 1-4, 10	23 CCR § 5032	This document is already in the record evidence. (DCP.D4.1.00043)
Exhibit. 4 Delta Protection Commission Land Use and Resource Management Plan for the Primary Zone of the Delta (2010)	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.03821)

5. *San Francisco Baykeeper, SS Band Miwok, Winnemem Wintu, Center for Biological Diversity, CA Sportfishing Protection Alliance, Little Manila Rising, FOR, CIEA, Sierra Club California, Restore Delta*

Document	Basis for Request	Ruling
Report P-2A: Total Population Projections for California Counties, July 1, 2020 -2070	Excel Sheet	Denied. Appellant included this document without complying with sections 5026 or 5032. There was no request to supplement the record and no basis for admission was provided. (Cal. Code Regs., tit. 23, §§ 5026, 5032.) Lacks foundation.

6. *SDWA*

Document	Basis for Request	Ruling
A copy of DWR's January 21, 2025 "Petition for Extension of	23 CCR § 5026 23 CCR § 5032	Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of a petition

<p>Time to Perfect Conditional Water Rights Under the State Water Project Permits (SWP) 16578, 16479, 16481, and 16482 for water supply and permits 16477 and 16480 for hydropower operations, including the one page cover letter ("memorandum") submitted there with totaling 19 pages.</p>		<p>submitted in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, Appellant has not shown that the petition is relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) It is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>A copy of DWR's "Economic Analysis of the California Waterfix - Benefits and Costs to Project Participants," prepared by David L. Sunding, Ph.D., dated September 20, 2018, totaling 42 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted to the Council in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the analysis of a different project is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) It is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

<p>A copy of the "Further Corrected Case-in-chief Testimony [of] Gregory F. Wilson, P.E. " that SDWA submitted as its exhibit "SDWA-21b" on October 9, 2025 in the SWRCB;s pending proceeding on DWR 's petition to add new points of diversion for the DCP totaling 22 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.V2.33.00015)</p>
<p>"Further Corrected Case-in-chief Testimony [of] Thomas K. Burke, P.E." that SDWA submitted as its exhibit "SDWA-1b" on October 14, 2025 in the SWRCB's pending proceeding on DWR's petition to add new points of diversion for the DCP, totaling 44 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Admitted. Respondent has not objected and the Corrected Case-in-chief Testimony of Thomas K. Burke is already in the record evidence. (DCP.V2.33.00002)</p>
<p>A copy of the "Analytical Study on Flood Induced Seepage Under River Levees," by Senda Ozkan, dated May 2003, totaling 247 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the</p>

		date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
A copy of the U.S. Army Corps' regulation ER 1110-1-1807, entitled "Engineering and Design, Drilling in Earth Embankment Dams and Levees," dated December 31, 2014, totaling 16 pages.	23 CCR § 5026 23 CCR § 5032	Admitted. A regulation issued under the authority of the United States may be judicially noticed. (Evid. Code § 452.) The Council takes official notice of the regulation.
A copy of a January 13, 2020 Memorandum prepared by Gilbert Cosio, Jr., an Engineer with MBK Engineers, to the CA Central Valley Flood Control Association re "Soil Investigations for Data Collection in the Delta IS/MND," totaling 4 pages.	23 CCR § 5026	Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Further, although this document was submitted by SDWA in support of SDWA's appeal of the 2024-2026 Geotechnical Investigations, it was not admitted into the administrative record for that certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

<p>A five-page collection of photos of boils that have erupted within Delta reclamation districts from preferential seepage paths.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Admitted. The Council takes official notice of the photographs submitted. The photograph, date, and description are not reasonably subject to dispute.</p>
<p>A copy of Chapter 11 - "Cone Penetrometer" from the USDA/NRCS' "Part 631 Geology National Engineering Handbook, " issued January 2013, totaling 33 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Admitted. The Council takes official notice of the chapter submitted as a publication of the United States Department of Agriculture which is not reasonably subject to dispute. (Cal. Evid. Code § 452(h).)</p>
<p>A copy of DWR's Bulletin 74-90 entitled, California Well Standards," dated June 1991, totaling 112 pages</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Admitted. The Council takes official notice of the Bulletin submitted as a publication of the Department of Water Resources which is not reasonably subject to dispute. (Cal. Evid. Code § 452(h).)</p>
<p>A copy of U.S. Fish and Wildlife Service's National Wetlands Inventory: maps, dated March 15 and 16, 2023, totaling 6 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>Denied. The maps submitted state they are for general reference only and that the U.S. Fish and Wildlife is not responsible for the accuracy or currentness of the base data shown on the map. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>A copy of the Internal Technical Review Panel's Memorandum re "ITR December Workshop on</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.H.1.00046)</p>

<p>[DCP] Tunnel and Shafts - Report, dated January 31, 2020, totaling 20 pages.</p>		
<p>A copy of Dante J. Nomellini, Sr.'s (attorney and general manager of the Central Delta Water Agency) handwritten markup of the map on page 9 of the above-referenced Internal Technical Review Panel memorandum, totaling one page.</p>	<p>23 CCR § 5026</p>	<p>Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of an attorney's markup to a map of a technical memorandum submitted by third parties to a federal agency. It is not a record of a court or administrative proceeding. It is also not a generally accepted technical or scientific fact or principle. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>A copy of the Central Delta Water Agency's "CDWA Supplemental Comments on the Delta Conveyance Project Draft Environmental Impact Report," dated December 16, 2022, totaling 1039.</p>	<p>23 CCR § 5026</p>	<p>This document is already part of the record for this certification. (DCP.D2.3.00582 – DCP.D2.3.00582.0024)</p>
<p>A copy of the Central Delta Water Agency's comments on the U.S. Army Corp's Draft Environmental Impact Statement for the DCP entitled, "DEIS Delta Conveyance Project – DJN Sr. part One," dated March 16, 2023, totaling 242 pages.</p>	<p>23 CCR § 5026</p>	<p>Denied. Appellant does not identify any fact for the Council's official notice but rather requests the admission of comments submitted to a federal agency. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the DCP Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

6. San Joaquin County, Solano County, Yolo County, CDWA, and LAND

Document	Basis for Request	Ruling
<p>Techau et al, The 32 bn question: Benchmarking California’s delta Water Tunnel Against Global Tunnelling risk, Available at: https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025 New Civil Engineer, November 14, 2025.; appeal of DPP, p. 8; Supplemental Submission, p. 8; Electronic form submitted to Council</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council’s official notice. An opinion article is not a generally accepted technical or scientific matter within the Council’s jurisdiction. While it may be undisputed that the article exists, a the Council does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.)</p>
<p>Delta Protection Commission, Thursday, November 13, 2025, Agenda and Meeting Packet, Agenda Item 10 (delegation of authority to respond to Delta Tunnel certification of consistency). Available at: https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-DPC-Agenda-packet_v1-508.pdf</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council’s official notice but rather requests the admission of documents constituting the agenda and meeting packet for the Delta Protection Commission. While the Council may notice the <i>existence</i> of the documents as a record of a public agency, it does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>

<p>Delta Protection Commission, Thursday, November 13, 2025, Agenda Item 10, Maps. Available at: https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-Item-10-DCP-Attachment-2-impact-maps.pdf.</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council’s official notice but rather requests the admission of maps that were part of a meeting of appellant Delta Protection Commission. While the Council may notice the <i>existence</i> of the documents as a record of a public agency, it does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) See also denied request of Delta Protection Commission above.</p>
<p>Delta Stewardship Council. August 27, 2020, Meeting Recording, remarks of Carrie Buckman at 1:33:25. https://calspan.org/meeting/dsc_20200827/.</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant does not identify any fact for the Council’s official notice but rather requests the admission of a recording of Carrie Buckman at a Council meeting. While the Council may notice the <i>existence</i> of the recording and Carrie Buckman’s remarks as a record of a public agency, it does not take official notice of the hearsay content in the recording. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>State Water Resources Control Board. October 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel Department of Water Resources.</p>	<p>23 CCR § 5032 23 CCR § 5036</p>	<p>This document is already part of the record for this certification. (DCPV3.1.00042)</p>
<p>Letter of Official act of the SWRCB; State Water Resources Control Board.</p>	<p>23 CCR § 5032</p>	<p>Admitted. The Council takes official notice of the SWRB Administrative Hearing Officer’s Letter.</p>

<p>November 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll General, Counsel Department of Water Resources.</p>		
<p>Delta Independent Science Board Meeting, Agenda Item No. 6; Feb. 21, 2024. Available at: https://calspan.org/meeting/di_sb_20240221/</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council’s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and a specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Document subject to Notice - Delta Independent Science Board Meeting, Agenda Item No. 8; April 22, 2024. Available at:</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council ‘s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the</p>

<p>https://calspan.org/meeting/di_sb_20240422/</p>		<p>existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Document subject to Notice - Delta Independent Science Board Meeting, Agenda Item No. 7; September 12, 2024. Available at: https://calspan.org/meeting/di_sb_20240912/</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council’s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and a specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the</p>

		administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
California Department of Fish & Wildlife, Golden Mussel Response Framework, April 14, 2025. Available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=231231	23 CCR § 5032	This document is already part of the record for this certification. (DCP.AA2.1.00072)
Maven's Notebook, DELTA ISB: New threat in the Delta: Golden mussels join the ranks of invasive species. Available at: https://mavensnotebook.com/2025/02/05/delta-isb-new-threat-inthe-delta-golden-mussels-join-the-ranks-of-invasive-species/ .	23 CCR § 5032	Denied. An online article is not a generally accepted technical or scientific matter within the Council's jurisdiction. Appellant does not identify any fact to be officially noticed. While it may be undisputed that the article exists, a the Council does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.)
California Department of Fish & Wildlife, 2025. California's Invaders, Golden Mussel. Available at: https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel .	23 CCR § 5032	This website information is already part of the record for this certification. (DCP.AA2.1.00069)
California Department of Fish & Wildlife, 2025 Golden	23 CCR § 5032	This website information is already part of the record for this certification. (DCP.AA2.1.00069)

<p>Mussel Survey Results in California. Available at: https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel.</p>		
<p>California Department of Water Resources. September 2025. Golden Mussel Detections (Sept. 2025 Update). Available at: https://water.ca.gov/-/media/DWR-Website/Web-Pages/What-We-Do/Recreation/Invasive-Mussel-Mitigation/Golden-Mussel-Detections-with-Clifton-Court-Forebay-Insert-15-20250924.pdf</p>	<p>23 CCR § 5026</p>	<p>Admitted. The Council takes official notice of the Department’s Golden Mussel Detections map. (Cal. Evid. Code § 452(h).)</p>
<p>California Department of Water Resources. 2025. Invasive Mussel Mitigation - Available at: https://water.ca.gov/What-We-Do/Recreation/Mussel-Mitigation. Cited: Appeal of BAS p. 4</p>	<p>23 CCR § 5026</p>	<p>Admitted. The Council takes official notice of the Department’s website concerning invasive mussel mitigation. (Cal. Evid. Code § 452(h).)</p>
<p>California Department of Water Resources. July 24, 2024,</p>	<p>23 CCR § 5026</p>	<p>Admitted. The Council takes official notice of the Department’s photograph of golden mussel. (Cal. Evid. Code § 452(h).)</p>

<p>photograph of golden mussel.</p> <p>Yang et al. Establishment risk of invasive golden mussel in a water diversion project: An assessment framework. Environmental Science and Ecotechnology. 17 (2024) 100305. Available at: https://water.sciencedirect.com/science/article/pii/S2666498-423000704; Cited by United States Bureau of Reclamation, et al. 2025. Western Basin Invasive Mussel Incident Response Toolkit. Literature on Golden Mussels. Available at: https://www.westerninvasivemussel.org/golden-mussels</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant seeks the admission of an article in the Environmental Science and Ecotechnology journal. Appellant does not identify a fact for the Council’s official notice. The article is not a generally accepted technical or scientific matter. The fact that it was cited by the United States Bureau of Reclamation does not make it an official act of the United States Bureau of Reclamation. The Council cannot take official notice of the hearsay content of the article and admit it as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Rebelo, Mauro. 2025. The Thread of the Golden Mussel CALMS Webinar. ; Webinar-Available at : https://biobureau.notion.site/The-Thread-of-the-Golden-Mussel-CALMS-Webinar-January-2025-1842c1e8779c80dabff1ff3ad58459f</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant seeks the admission of a webinar concerning the Golden Mussel generally. Appellant does not identify a fact for the Council’s official notice. The webinar is not a generally accepted technical or scientific matter. The Council cannot take official notice of the hearsay content of the webinar and admit it as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit23, § 5026, subd.(c)(3).)</p>

<p>California Department of Water Resources. Jun 30, 2022, Delta Conveyance Deep Dive: Intakes and Fish Screens. Available at: https://www.youtube.com/watch?v=R4H3E_Pe-i4</p>	<p>23 CCR § 5026</p>	<p>This video is already part of the record for this certification. (DCP.D6.1.00185)</p>
<p>Activities and Facilities, Information Sources, and Economic Contributions of Delta Events. Available at :https://delta.ca.gov/wp-content/uploads/2020/09/Delta-Recreation-Report-508.pdf.</p>	<p>23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.D3.1.03924)</p>
<p>Delta Stewardship Council, Delta Science Program. California Delta Residents Survey data Explorer, DSC, October 16, 2025. https://deltascience.shinyapps.io/DeltaResidentsSurveyDataViewer</p>	<p>23 CCR § 5032</p>	<p>Denied. The Council’s Delta Residents Survey Data Explorer is not an official act of the Council. Appellant further does not identify a fact for the Council’s official notice. The Explorer is not relevant to the Certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>Delta Stewardship Council. October 27, 2022. E-mail from Daniel Constable to Other Staff of the Delta Stewardship Council.</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant has failed to articulate a basis for the Council to officially notice an internal email between Council staff. An email is not a fact and proposition that is not reasonably subject to dispute and capable of immediate and accurate determination. It is further not an official act or decision of the Council. Appellant has not presented specific evidence that the document was part of the administrative record before the</p>

		Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
California Department of Water Resources. December 3, 2025. SWP Golden Mussel Update PowerPoint presentation Brianne Sakata.	23 CCR § 5032	Admitted. The Council takes official notice of the Department’s PowerPoint presentation concerning the Golden Mussel. (Cal. Evid. Code § 452(h).)
About the Delta Independent Science Board; Available at: https://deltacouncil.ca.gov/delta-isb/ .	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice from the Council’s webpage titled “About the Delta Independent Science Board”. This webpage is not a generally accepted technical or scientific matter within the Council’s jurisdiction. In addition it is not clear what “fact” appellant claims to be beyond dispute.
California Department of Water Resources. October 23, 2025. One Year Later: How California is combating Golden Mussels (Video). Available: https://www.youtube.com/watch?v=zPEN7BNK70Q&t=1s;	23 CCR § 5032	Admitted. The Council takes official notice of the Department’s video. (Cal. Evid. Code § 452(h).)
Rachel Becker, Calmatters, July 15, 2025. "A new invader threatens California water supplies. Can't the state stop its spread?" Available at: https://calmatters.org/environment/water/2025/07/golden-	Evid. Code § 452, subd. (h)	Denied. Appellant has failed to identify a fact for the Council’s official notice. While the article may contain certain facts that would be subject to official notice if properly identified to the Council for admission, the article as a whole not is a generally accepted scientific fact within the Council’s jurisdiction or a fact subject to official notice. (Cal. Code Regs, tit. 23, § 5032.) This article is not a Department publication. Appellant has not presented specific evidence that the document was part of the

mussel-california-water-supplies-spread-inspections/		administrative record before the Department for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Rachel Becker, Cal matters, November 4, 2025. "Emerging threat': An invasive species is upending life in the Delta, with no help on the way." Available at: https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/	Evid Code. Code § 452, subd. (h)	Denied. Appellant has failed to identify a fact for the Council's official notice. While the article may contain certain facts that would be subject to official notice if properly identified to the Council for admission, the article as a whole not is a generally accepted scientific fact within the Council's jurisdiction or a fact subject to official notice. (Cal. Code Regs, tit. 23, § 5032.) This article is not a Department publication. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit23, § 5026, subd.(c)(3).)

7. DCC Engineering Co.

Document	Basis for Request	Ruling
Exhibit - 1 Lost Slough Patrol Road Rehabilitation - Bid Schedule for Construction	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council's official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

<p>Exhibit 2 - San Joaquin River Seepage Repair Project 2025 - Bid Schedule for Construction</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>Exhibit 3 - Sacramento River Levee Erosion Control and Habitat Enhancement Project - Bid Schedule for Construction</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>Exhibit 4 - Delta Conveyance Authority. Soil Balance and Reusable Tunnel Material Supplement (Final Draft) May 27, 2022</p>	<p>23 CCR § 5032</p>	<p>This document is already in the record evidence. (DCP.D4.1.00097)</p>
<p>Exhibit 5 - Lost Slough Patrol Road Rehabilitation, Time and Materials Invoice</p>	<p>23 CCR § 5032</p>	<p>Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta</p>

		Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 6 - Lost Slough Patrol Road Rehabilitation and Surfacing, Invoice	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 7 - Snodgrass Slough Emergency Levee Repair Invoice	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 8 - Delta Conveyance Authority, Barge Transportation Study, Final Draft. December 23, 2021	23 CCR § 5032	This document is already in the record evidence. (DCP.D4.1.00043)
Exhibit 9 - Georgiana Slough Rock Slope Protection Restoration, Fall 2025- Summary of Work	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta

		Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 10 - California Department of Fish & Wildlife. February 5, 2021. Final Lake or Streambed Alteration Agreement, Notification No. 1600-2017-0091-R3, Sacramento River Erosion Control and Habitat Enhancement Project	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has further failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 11 - Central Valley Regional Water Quality Control Board. April 29, 2021. Clean Water Act Section 401 Water Quality Certification and Order, Sacramento River Erosion Control and Habitat Enhancement Project, 5A34CR00817	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
Exhibit 12 - Metropolitan Water District (MWD), November 17, 2025, Joint One Water & Adaption Committee and Subcommittee on Imported Water https://tinyurl.com/mtt6p9sz	23 CCR § 5032	Denied. Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

Exhibit 13 - Delta Levees Investment Strategy Final Report (Delta Stewardship Council, July 2017), Executive Summary p. ES -1	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.00507)
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EXHIBIT B. ACRONYMS USED IN THIS DECISION

Acronym	Full Meaning
ALS	Agricultural Land Stewardship
AMMP	Adaptive Management and Monitoring Plan
ARMP	Archaeological Resources Management Plan
BAS	Best Available Science
BDCP	Bay Delta Conservation Plan
BMP	Best Management Practices
CAPB	Contracts for the Administration of Public Benefits
CBP	Community Benefits Program
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CER	Concept Engineering Report
CHAB	Cyanobacteria Harmful Algal Bloom
CMP	Compensatory Mitigation Plan
CPOD	Change in Point of Diversion
CRHR	California Register of Historical Resources
CRP	Cosumnes River Preserve
CVHM	Central Valley Hydrologic Model
DCA	Delta Conveyance Design and Construction Authority
DCP	Delta Conveyance Project
DWR	Department of Water Resources
DLIS	Delta Levees Investment Strategy
DSM2	Delta Simulation Model 2
EIR	Environmental Impact Report
EC	Environmental Commitment
EJ	Environmental Justice
ESA	Endangered Species Act
GIS	Geographic Information System
GSAs	Groundwater Sustainability Agencies
HAB	Harmful Algal Bloom
HRSER	Historical Resources Survey and Evaluation Report
ITP	Incidental Take Permit
MM	Mitigation Measure
MMRP	Mitigation Monitoring and Reporting Program
NHA	National Heritage Area
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
OPC	Ocean Protection Council

PHRA	Priority Habitat Restoration Area
RTM	Reusable Tunnel Material
SEC	Stakeholder Engagement Committee
SHPO	State Historic Preservation Officer
SLNWR	Stone Lakes National Wildlife Refuge
SWP	State Water Project
SWRCB	State Water Resources Control Board
TCC	Twin Cities Complex
TCL	Tribal Cultural Landscape
TCR	Tribal Cultural Resource
TCRMP	Tribal Cultural Resources Management Plan
TUCO/TUCP	Temporary Urgency Change Order/Petition
UWMP	Urban Water Management Plan
VMT	Vehicle Miles Traveled
WSIP	Water Storage Investment Program

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