

Appeal of Certification of Consistency

C20257-A1

Step 1 - Appellant(s) Information

Appellant Representing: Delta Protection Commission
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Step 2 - Covered Action being Appealed

Covered Action ID: C20257
Covered Action Title: Delta Conveyance Project
Agency Subject to Appeal: California Department of Water Resources
Contact Person Subject to Appeal: Katherine Marquez
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Covered Action
Description:

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

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

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

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

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute [mitigation measures](#) that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

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

Yes, Inconsistent

Inconsistency: Mitigation Measures Required by the Delta Plan The project is inconsistent with the requirement to include mitigation measures equal or more effective as those required by the Delta Plan. -----

----- Delta Plan
Policy: G P1(b)(2): Mitigation Measures Equally or More Effective Than Delta Plan EIR. The Delta's cultural resources represent far more than a simple list of historic buildings and archaeological sites, but rather inhabit hundreds of thousands of acres of river channels, sloughs, remnant marshes and riverside woodlands, islands and tracts, flood control and drainage works, orchards, vineyards, other farms, historic villages of California Native American tribes and immigrants from around the world, waterside landings, scenic drives, developed and undeveloped recreation areas, and other significant features. The modern Delta is a human-created landscape, a new landscape, a transformation of the land. It has evolved through its use by many peoples –California Native American tribes, Mexican-era pioneers, 19th century immigrants from Europe and Asia, as well as migrants from other parts of the country, family farmers, agricultural entrepreneurs, farm workers from the Pacific and Latin America, inventive engineers, and more recent residents and visitors drawn by its landscape, quiet, relaxation, and free spiritedness. These generations' pursuit of homes, sustenance, and reward for their labor and innovation transformed the Delta from a vast and complex wetland to today's region of agriculture, recreation, and historic communities. As defined by the National Park Service (NPS), a cultural landscape is a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic

Answer Justification:

event, activity, or person, or that exhibits other cultural or aesthetic values. The Delta is a landscape that has evolved through use by the people whose activities or occupancy shaped that landscape, which the NPS calls a "historic vernacular landscape." Example descriptions provided by the NPS match those of the Delta areas affected by the Delta Conveyance Project (DCP) including rural villages, agricultural landscapes such as farms and ranches, landscapes with a total absence of buildings, and landscapes with linear resources such as transportation systems like the Sacramento River or River Road. A district of historic farms along a river may be an example of a significant cultural landscape. Scenic highways are also potential examples. In many ways, the Delta is a collection of historic districts of vast scale, linked by its waterways and scenic highways, replete with significant features related to exploration, maritime history, engineering, commerce, conservation, invention, government, and transportation. For California Native Americans, the Delta is a sacred landscape – their home and the heart of their cultures. Its significance also extends to both a national historic context, as an example of national land and water management from the 1850s through the 1950s, and a state historic context as an example of California's exploration, settlement, agricultural development, and ethnic diversity during that period.

A. The Delta Conveyance Project Does Not Include Adequate Mitigation Regarding Cultural Landscape Investigation, Avoidance and Protection, and is Therefore Inconsistent with G P1(b)(2). The DCP is inconsistent with G P1(b)(2) mitigation requirements in regards to cultural resources because DWR's record does not demonstrate sufficient mitigation measures to address investigation of, impacts to, and loss of cultural landscapes, a key component of Delta as Place values. Cultural resources and legacy communities, together with agriculture and recreation, embody the region's cultural history, economic foundation, long-time human interaction with the natural environment, and visual character. The importance of the Delta to the United States' cultural and historical context has been recognized by Congress, which in 2019 designated the Delta as a National Heritage Area (NHA). The Delta Plan EIR contains the following mitigation measures involving cultural landscapes: 10-1(c). Before any ground-disturbing activities begin, conduct intensive archaeological surveys, and subsurface investigations if warranted, to identify the locations, extent, and integrity of presently undocumented archaeological, tribal cultural, and landscape resources that may be located in areas of potential disturbance. Conduct tribal consultation to identify and evaluate the presence and significance of tribal cultural resources and landscapes. Surveys and subsurface investigations where tribes have identified tribal cultural resources shall include tribal monitors in addition to archaeologists. In addition, if ground-disturbing activities are planned for an area where a previously documented prehistoric archaeological site has been recorded but no longer may be visible on the ground surface, conduct test excavations to determine whether intact archaeological subsurface deposits are present. Also conduct surveys at the project site for the possible presence of cultural landscapes and traditional cultural properties.

10-1(d). If potentially CRHR-eligible prehistoric or historic-era archeological, tribal cultural, or landscape resources are discovered during the survey phase, additional investigations may be necessary. These investigations should include, but not necessarily be limited to, measures providing resource avoidance, archival research, archaeological testing and CRHR

eligibility evaluations, and contiguous excavation unit data recovery. In addition, upon discovery of potentially CRHR-eligible prehistoric resources, coordinate with the NAHC and the Native American community to provide for an opportunity for suitable individuals and tribal organizations to comment on the proposed research. 10-1(e). If CRHR-eligible archaeological resources, tribal cultural resources, or cultural landscapes/properties are present and would be physically impacted, specific strategies to avoid or protect these resources should be implemented if feasible. These measures may include: i. Planning construction to avoid the sensitive sites ii. Deeding the sensitive sites into permanent conservation easements iii. Capping or covering archaeological sites iv. Planning parks, green space, or other open space to incorporate the sensitive sites 10-3(a). Inventory and evaluate historic-era buildings, structures, linear features, and cultural landscapes. Conduct cultural resources studies to determine whether historic-era buildings, structures, linear features, and cultural landscapes in the project area are eligible for listing in the CRHR. 10-3(f). Comply with the Secretary of the Interior's Guidance for the Treatment of Cultural Landscapes to preserve landscapes' historic form, features, and details that have evolved over time. The DCP Final EIR's analysis focuses on a limited set of properties, sites, and districts, but fails to adequately assess the cultural values of the Delta in a larger context. In effect, the Final EIR cannot see the forest (the cultural landscape) for the trees (individual properties). The cultural landscape approach, as discussed in the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes, is used in the Commission's Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area. The proposed project will compromise all or portions of resources in the affected area and potentially disqualify them for consideration by the California Register of Historical Resources (CRHR) and the National Register of Historic Places (NRHP). The mitigation measures should take a cultural landscape contextual approach, given the significance and richness of the Delta's historic properties and their surroundings. However, as noted in DWR's Certification of Consistency documents, the mitigation measures in the Final EIR, which DWR certified on December 21, 2023, only discuss future documentation of cultural landscapes that will be harmed by the DCP and fail to consider and adopt mitigation measures to avoid or protect these resources as required in Delta Plan Mitigation Measures 10-1(e) and 10-3(f): Mitigation Measure CUL-1b requires documentation and recordation be prepared for built resources that will be directly and adversely affected by project construction (Chapter 19, Impact CUL-1). Specifically, Historic American Building Survey (HABS) documentation will be prepared for CRHR- and NRHP-eligible buildings and structures that will be demolished or altered. Such documentation will be led or supervised by architectural historians that meet the Secretary of the Interior's Professional Qualification Standards. Historic American Landscape Survey (HALS) records and Historic American Engineering Record (HAER) documents will also be prepared for affected historic landscapes or water-associated resources. All reports will include written and photographic documentation of the significant and character-defining features of these properties. The BETP will indicate whether the reports will be formally submitted to the National Park Service for review and approval, based on a consideration of the rarity or caliber of the resource being mitigated, or

instead distributed to local repositories or used for interpretive or educational programs. Finally, as applicable for cultural landscape historic districts, Mitigation Measure CUL-1b requires preparation of a Landscape Treatment Plan to document the history and significance of the NRHP-eligible landscape identified in the HRSER and provide treatment recommendations (Chapter 19, Impact CUL-1). The HABS documents, HALS, and Landscape Treatment Plan are the same as, equal to, or more effective than the DP MM 10-3 recommendation to provide photographic and written documentation where avoidance of significant historic resources is not possible. [DP MM 10-3(d)] The DCP Final EIR discussed mitigation for buildings and sites that are directly impacted by construction of the proposed project. The Final EIR identified 17 built-environment historical resources and 13 archaeological resources that would be affected by the construction of water conveyance features, including single family properties, a bridge, and water infrastructure projects. The Final EIR mitigations outline future development of undescribed built environment treatment plans and a vague assurance that project proponents will consult with relevant parties prior to demolition or ground-disturbing activities. DWR is not proposing defined funding sources for mitigating direct or indirect impacts to cultural resources, leaving final disposition of properties and landscapes potentially eligible for the California and National Registers to the National Historic Preservation Act (NHPA) Section 106 process. The recently concluded NHPA Section 106 Programmatic Agreement (PA) between the Corps, DWR and the State Historic Preservation Officer (SHPO) does not identify any clear standards for future mitigation development. Instead, protections rely on a Historic Property Treatment Plan process and the parties to it. The process is necessarily phased over years and will need to be carefully tracked by those who are concerned about preserving the integrity of Delta landscapes. The process, without a clear commitment to defined mitigation with identified funding, is simply insufficient to mitigate for the DCP's extensive and adverse impacts on the Delta cultural landscape, as G P1(b)(2) requires. DWR did not initiate meaningful dialogue early on with the Commission and local community organizations (such as local historical societies or governance organizations like the Locke Management Association) about potential mitigation for cultural resources impacts. Instead, this is left to the Section 106 process, which does not address issues that may be outside the Area of Potential Effect. Thus, without a cultural landscape approach, numerous sites of tribal, cultural, and historic value will be damaged or compromised. They also have not made an effort to assess the cultural landscape along potential DCP alignments. This required step is postponed until DWR has already made major decisions about the DCP. Since this was not done, avoidance and minimization through project design and construction planning was ignored. The lack of coordination with cultural organization representatives coupled with a future undefined process (the Section 106 process) and funding to mitigate impacts to cultural resources will have a significant adverse impact on the Delta. The deficient DCP mitigation for the Delta's cultural landscape and the complete lack of any clear, reliable funding source or commitment to timing of mitigation, all demonstrate substantially inferior mitigation to the intent of Delta Plan policy G P1(b)(2). The mitigation scheme is not equally or more effective than DP MM-10-1(c), (d), and (e) and 10-3(a) and (f) will have an adverse impact on achievement of one or both of the coequal goals. Substantial

evidence in the record does not support the claimed consistency of DCP with this policy. B. The DCP's Inconsistency with G P1(b)(2) for Cultural Landscape Mitigation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan. The proposed DCP is inconsistent with G P1(b)(2) for the Delta's cultural landscape. If carried out as proposed, without the legally required level of mitigation the Delta Plan dictates, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of the Delta's cultural heritage, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, including the Delta's cultural heritage, the DCP undermines and is inherently inconsistent with, the Delta Plan. Conclusion Based on the foregoing discussion, DWR's Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2). Inconsistency: Insufficient Mitigation of Agricultural Land Loss The project is inconsistent with the requirement to incorporate mitigation measures in the Delta Plan, or substitute mitigation measures that are equally or more effective. -----

- Delta Plan Policy: G P1(b)(2): Mitigation measures A. The Delta Conveyance Project's Vague and Inadequate Mitigation of Agricultural Land Loss is Inconsistent with G P1(b)(2). The State and Federal governments clearly articulated the need to preserve the irreplaceable Delta, including its agriculture. The Delta Protection Act of 1992 as amended by the Delta Reform Act requires the coequal goals to be achieved in a manner that "protects and enhances" the Delta's "agricultural values" and "agriculture." "The Delta is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value" and "[a]gricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses." The Delta Protection Act ensures that the Delta's agricultural resources do not face the threat of conversion to urban uses. More recently (2019), the Delta's unique resources were recognized by Congress when it created the Sacramento-San Joaquin Delta National Heritage Area. The Delta Protection Commission (Commission) has previously expressed its view that the Delta Conveyance Project (DCP) Draft EIR greatly underestimated the impact to agricultural resources. Agriculture is the dominant land use and economic driver in the rural Delta region. According to the Commission's 2020 report, The State of Delta Agriculture, Delta agriculture supported 15,717 jobs, \$1.3 billion in value-added, and \$2.7 billion in output in the five Delta counties in 2016. Across the State of California, Delta agriculture supported 23,064 jobs, over \$2.17 billion in value-added, and over \$4.59 billion in output. Agricultural land conversion as a result of the DCP will be permanent, inadequately mitigated, or insufficiently compensated: DCP mitigation does not provide for the level of mitigation required in the Delta Plan. The Delta Plan EIR Mitigation Measure (MM) 7-1 states that a project that will result in permanent conversion of farmland should preserve lands in perpetuity with a "minimum target ratio

of 1:1, depending on the nature of the conversion and the characteristics of the Farmland to be converted.” Chapter 15 of the DCP Final EIR adopts essentially the same mitigation measures found in the California WaterFix Final EIR/EIS and in the Bay-Delta Conservation Plan (BDGP) EIR/EIS . These have been consolidated into two mitigation measures, Mitigation Measure AG-1 (Preserve Agricultural Land), and Mitigation Measure AG-3 (Replacement or Relocation of Affected Infrastructure Supporting Agricultural Properties) as well as an Agricultural Land Stewardship (ALS) Plan from previous tunnel iterations, now repackaged as a set of strategies. This is described in the FEIR Appendix 15B (Agricultural and Land Stewardship Considerations) as a “voluntary, collaborative process utilizing a selection of strategies for agriculture and land stewardship in the Sacramento–San Joaquin River Delta (Delta).” This appendix describes the ALS Strategies implemented during early project planning to minimize the extent of farmland that project buildout would convert and identifies ALS Strategies which could be considered for future implementation. During the DCP planning process, agriculture land was actually ranked to be preferable to other land uses for launch site locations. Appendix 15B describes DWR’s “Early Implementation of Early Project Planning” which includes steps to minimize farmland impacts. Yet close reading of Appendix 15B and the Shaft Siting Study Technical Memo shows that farmlands were prioritized to be preferable to other lands: tunnel launch shaft location criteria first excluded lands for wildlife refuges or preserves and lands managed for flood management and associated habitat – in other words, areas where there would be cost and permitting implications. Only secondarily, as sub-criteria, were farmlands given lower values that would rank them as less optimal for the launch shaft siting. Appendix 15B itself contains no reference to mitigation ratios or how they would be achieved, but does include analyses of various impact areas that address broader Delta agricultural issues. Appendix 15B.2.5 (Socioeconomics) includes a statement that is repeated throughout the appendix that “The long-term effects would be reduced if many areas of the construction footprint that would not be needed for permanent infrastructure were successfully returned to agricultural production.” Finally, Appendix 15B states that “While impacts on agricultural land could not be avoided, Strategy E1.3.1: Reduce impacts on land, E1.1: Early project planning, and E1.2.1: Involve farmers and landowners in project planning, were implemented to help reduce the magnitude of conversion of agricultural land. Avoidance of Important Farmland and Land under Williamson Act contract took precedence during the planning process over other types of farmland.” This underscores a fundamental flaw throughout the DCP project that undermines a finding of consistency with Delta as Place values and the Delta Plan: the DCP pits Delta values against each other. High value farmland is pitted against lower value farmland and farmland is pitted against other community land uses. For example, an elementary school is pitted against farmland. In the South Delta, according to the FEIR, “Construction of Alternative 5 could result in additional traffic on roads used to access Mountain House Elementary School; however, construction traffic would be routed away from this school during the construction period to avoid impacts on the school.” The FEIR fails to mention that the method of avoidance is to route construction traffic to a new haul road through an orchard. Agricultural land conversion along the tunnel alignment will not be temporary, considering the estimated 13-year

construction window and the definition of temporary as 2 years (Final EIR Chapter 15 defines “temporary” as no longer than 2 years). Even construction sites that are not permanently part of operations will be fallow so many years and will be affected by soil modifiers and other effects from the use of the property as to be of questionable agricultural value and unlikely to be successfully reclaimed for agricultural use. Other agricultural lands, bisected by project features such as roads and facilities, will be rendered useless for farming due to their small size, or impractical or inaccessible location. The concrete batch plant complex located on Williamson Act land near the intersection of Lambert Road and Franklin Road in Sacramento County provides one example of this acknowledged in the FEIR, where it is projected to result in permanent conversion of approximately 15 acres. In addition, most if not all facilities such as roads and off-ramps left in place will increase pressure for non-farm use at sites that cannot be returned to agriculture. The project as proposed would retain Significant and Unavoidable (SU) impacts on agriculture, including permanent and temporary conversion of some 3,800 acres of Prime Farmland and other Important Farmland categories, and 1,200 acres of land under Williamson Act contracts. In addition, the Compensatory Mitigation Program (CMP) would come at a price of 1,175 acres of Important Farmland on Bouldin Island converted to habitat. Attachment A, Maps 2-5, depict the spatial distribution of these permanent and temporary agricultural land losses in specified areas within the DCP. Through design modifications, DWR has reduced some agricultural land impacts but fundamentally the severity of the impacts on Delta farmland remain unmitigated and uncompensated for and those reductions have come at the cost of creating other impacts, as noted above with respect to the Mountain House School. DWR has not demonstrated with substantial evidence that they have identified specific quantifiable and achievable measures to avoid or mitigate for known and unknown farmland losses resulting from the DCP that are equal to or more effective than all of DP MM 6-2. The DCP is inconsistent with G P1(b)(2) mitigation requirements applicable to agricultural land because DWR’s record, as reflected in the G P1(b)(2) Attachment 1: Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table (Crosswalk), does not demonstrate sufficient mitigation measures to address impacts to and loss of agricultural land, resulting in significant adverse impacts on the coequal goals and Delta as Place values in these ways: 1. Inadequate Mitigation for Farmland Loss Permanently Erodes Delta Agricultural Values a. Mitigation presented in the Final EIR largely restates existing regulatory requirements rather than providing specific, enforceable, project-level actions. Mitigation Measure AG-1 is repeatedly referenced, but the description remains generic – for example, a 1:1 ratio of easement dedication or in-lieu fee payments – and does not include the necessary implementation detail. The Final EIR does not specify: i. Where easements would be acquired within the Delta counties. ii. Whether sufficient comparable farmland is available or achievable. iii. Whether funds/land trusts are secured. iv. How mitigation lands will be selected or prioritized spatially in relation to the lands impacted. v. How “permanent” protection will be monitored, enforced, or evaluated over time. The Final EIR itself acknowledges that, even with AG-1, the project would still result in a net loss of Important Farmland, underscoring the inadequacy of the mitigation framework. Taken together, these omissions reflect a mitigation framework that is vague and lacks the

concrete, practicable steps necessary to demonstrate that agricultural land losses can or will be effectively offset. Additionally, because AG-1 only requires acquisition of mitigation land “to the extent feasible,” there is no assurance that replacement farmland will be of equal or better quality or located within the parts of the Delta actually affected by the Project, resulting in mitigation that may occur far from where the impacts occur. In addition, Appendix 15B confirms that no funding has been encumbered to implement agricultural conservation easements or other land-based mitigation, and suggests that the \$200 million Community Benefit Program could be used “if there is community-driven support.” This amount is insufficient to cover the scale of permanent and long-term agricultural land losses identified in the FEIR. Accordingly, substantial evidence in the record does not support DWR’s assertion that the mitigation scheme is equal to or more effective than DP MM-7-1 and DP MM-6-2.

2. Fragmentation Effects Are Ignored, Causing Long-Term Degradation of Delta’s Agricultural Landscape

a. DP MM 7-1 requires avoiding or minimizing fragmentation of farmland. The Crosswalk claims this is achieved, but does not explain: i. How fragmentation was measured. ii. What thresholds or metrics were applied. Whether any design modifications were made to reduce fragmentation. iii. What the residual fragmentation impacts are on long-term agricultural viability. b. Instead, the Crosswalk simply restates that project components were “sited to avoid agricultural land to the extent possible,” without providing data or examples of avoided impacts. c. Commission GIS staff review of the project footprint using GIS datasets provided by DWR further demonstrates that fragmentation impacts are both substantial and undisclosed. Drawing on more than ten years of professional GIS analysis experience, Commission staff examined construction areas, permanent facilities, and haul routes and identified that the project would create numerous isolated agricultural remnants, including narrow slivers, irregularly shaped fields, and parcels effectively severed from infrastructure access. See Attachment A, Maps, which depicts locations where construction and permanent facilities would break up formerly contiguous farmland into smaller or irregular pieces. These fragmented units are unlikely to remain viable for commercial production. The Crosswalk document does not acknowledge these fragmentation patterns in detail, does not assess their implications for long-term agricultural use potential, and does not reconcile them with the Delta Reform Act mandate to preserve the agricultural landscape of the Delta as a coherent and functional whole.

3. Heavy Reliance on Future Plans Defers Mitigation—and Leaves Agricultural Values of Delta as Place at Risk of Further Degradation

a. The FEIR relies heavily on assertions without providing substantive supporting evidence. Throughout the agricultural mitigation sections—particularly those related to DP MM 7-1 (farmland conversion) and Mitigation Measure AG-1— DWR repeatedly asserts that the project’s measures are “the same as, equal to, or more effective than” Delta Plan requirements. However, the FEIR does not demonstrate: i. What criteria or comparative frameworks were used to judge equivalence. ii. Any measurable performance standards to evaluate agricultural mitigation effectiveness. iii. Any analysis of feasibility, success likelihood, or implementation constraints of the proposed mitigation actions. b. Furthermore, several mitigation components—including stewardship measures described in Appendix 15B—are contingent on future plans, funding decisions, or program development, making them speculative

rather than enforceable commitments. 4. The Project Undermines the Coequal Goals Framework by Failing to Protect “Delta as Place” While Pursuing Water Supply Reliability a. The coequal goals require that water supply reliability and ecosystem restoration be advanced in a manner that protects and enhances the unique agricultural, cultural, and landscape values of the Delta as Place. However, the Crosswalk and FEIR reveal a consistent imbalance: i. The Project provides extensive detail, design development, and performance standards for water-supply infrastructure, while relegating protection of Delta agricultural landscapes to generalized descriptions, unquantified easements, deferred planning, and non-binding stewardship concepts. This imbalance undermines the statutory requirement that the coequal goals be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. Substantial evidence in the record does not support the claimed consistency of DCP with G P1(b)(2). B. The DCP’s Inconsistency with G P1(b)(2) For Agricultural Land Mitigation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan. The proposed DCP is inconsistent with G P1(b)(2) for the Delta’s agricultural lands. If carried out as proposed, without the legally required level of mitigation the Delta Plan dictates, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of the Delta’s agricultural foundation, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to “protect and enhance” Delta values, including the Delta’s agricultural lands, the DCP undermines and is inherently inconsistent with, the Delta Plan. Conclusion Based on the foregoing discussion, DWR’s Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2) for agricultural lands.

Inconsistency: Insufficient Mitigation for Recreation Impacts The project is inconsistent with the requirement in G P1(b)(2) to incorporate mitigation measures in the Delta Plan, or substitute mitigation measures that are equally or more effective. -----

----- Delta Plan Policy: G P1(b)(2): Mitigation Measures Equally or More Effective Than the Delta Plan EIR. G P1(b)(2) states: (2) Covered actions not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective; A. The DCP is Inconsistent with G P1(b)(2) Because it Fails to Incorporate Mitigation Measures for Significant and Adverse Construction Impacts on Delta Recreation. Recreation is second only to agriculture in contributing to the Delta region’s economy. According to the Economic Sustainability Plan (ESP) 2020 update, visitors to the Delta region generated a total of 12 million visitor-days of use annually in 2020 with a direct economic impact of more than \$250 million in spending. This included

approximately 8 million resource-related (e.g., boating and fishing) visitor days of use per year, 2 million urban parks-related (e.g., golf, picnic, and turf sports), and 2 million right-of-way-related (e.g., bicycling and driving for pleasure) recreation visitors per year. Most of this visitation occurs in interior areas of the Delta that will be largely impacted by the DCP. The ESP Recreation Update noted that most spending occurs in Legacy communities and marinas, some of the areas hardest hit by DCP construction. Some issues the Economic Sustainability Plan (ESP) Recreation update identified as relevant to the impact of the DCP include an alarming decrease in the number of marinas in the Delta since 2008, from 112 to 97 in 2020, as well as a decline in recreation-related establishments located in the Primary Zone, from 96 in 2008 to 70 in 2020. Furthermore, the number of boat builders in the Delta has dropped by 20%, along with declines in most other boating-related services. As described in the Commission's appeal on inconsistency with Policy G P1(b)(3) on best available science, the Final EIR inadequately considered Delta recreation and failed to base its assessment of impacts on Delta recreation on best available science and data. Also, the Final EIR conclusion that recreation impacts were determined to be Less Than Significant under CEQA does not address the adequacy of mitigation for Delta Plan consistency purposes. For example, at Lower Roberts Island, long-term levee construction activities associated with the Lower Roberts complex will directly affect the Turner Cut and Tiki Lagoon Resorts. Windmill Cove Marina will also likely see major disruptions due to construction noise and activities associated with the construction and use of a rail spur and road from the Port of Stockton over the 13-plus year duration of the launch shaft facility and tunnel boring. No mitigation has been proposed for the substantial "temporary" impacts to recreation in the Delta by the project proponents, other than creation of site-specific construction traffic management plans, which are deferred to the future and as proposed will place an uncompensated burden on local public works and emergency responders, the latter which are often volunteer staffed. While this could conceivably address roadway access to recreation areas, it does nothing to address the damage to or loss of recreation facilities themselves. The Delta Plan EIR Mitigation Measure (MM) 18-2 states that "If substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreation providers to direct displaced users to under-utilized recreational facilities." There is no analysis in the record of temporary or permanent impacts, because there is virtually no relevant data on both formal and informal recreational uses in the project area. It should be noted that Final EIR Chapter 15 defines "temporary" as no longer than 2 years, and construction will last over a decade and a half depending on location and facility. The lack of analysis and associated mitigation or project modifications do not meet the standard set forth in the Delta Plan MM 18-2. Scenic highways have been designated at State Routes 160 and 12. In the Commission's 2019 Visitor Preference Survey, 73% reported engaging in land-based recreation (hiking, picnicking, camping, walking, or bicycling) and 58% reported engaging in water-based activities (boating, kayaking, canoeing, swimming). Of the respondents to the 2023 Delta Residents Survey Summary Report, 66% reported engaging in land recreation, and 39% in water recreation. The most frequently mentioned recreational activities preferred by visitors and

residents included driving for pleasure, viewing scenery and wildlife, historical sightseeing, wine tasting, and attending festivals or events, all of which involve driving through the Delta (citation). The adverse impacts on all these recreational activities that rely on the roads and highways for part of the experience are not addressed in the mitigations. Likewise, the waterways are noted for a range of recreational experiences, including water sports and exploring by kayak, sail, or motorboats. These too will be disrupted by the construction of intakes, bridges and levees, and DWR has not shown substantial evidence in the record for the mitigation of these impacts. DWR does not consider the DCP's impacts to recreation to be significant and as such does not mitigate these impacts, this despite the evidence that impacts will be longer than the 2-year temporary definition. This is inconsistent with Delta Plan mitigation requirements. Furthermore, and related, substantial evidence in the record does not support the claimed consistency of DCP with G P1(b)(2) for agricultural land. B. The DCP's Inconsistency with G P1(b)(2) For Recreation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan. The proposed DCP is inconsistent with G P1(b)(2) for Delta recreation. If carried out as proposed, without the level of mitigation required by the Delta Plan, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP purports to achieve water supply reliability, but at the expense of Delta recreation and the economic foundation it brings to Delta communities and residents, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, including Delta's recreation, the DCP undermines and is inherently inconsistent with, the Delta Plan. Conclusion Based on the foregoing discussion, DWR's Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2) for recreation. [DPC_251117 Intro and 29773 Letter.pdf](#), [Attachment-A Maps.pdf](#), [Attachment-C DCP Inconsistency with G P1\(b\)\(2\)-cultural landscape.pdf](#), [Attachment-D DCP Inconsistency with G P1\(b\)\(2\)-agricultural lands.pdf](#), [Attachment-E DCP Inconsistency with G P1\(b\)\(2\)-recreation.pdf](#)

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

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

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

Yes, Inconsistent

Answer Justification:

Inconsistency: Failure to Use Best Available Science for Recreation Impacts
The project is inconsistent with the requirement in G P1(b)(3) to use best available science. -----

----- Delta Plan Policy: G P1(b)(3): Use of Best Available Science. G P1(b)(3) states that "all covered actions must document use of best available science." Appendix 1A of the Delta Plan identifies the

following criteria: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. A. The DCP's Delta recreation data collection does not meet the best available science standard. There is no substantial evidence in the DCP record of recreational use data to support the conclusion the project either does not impact recreation significantly or that it is consistent with G P1 (b)(3). The data provided in the FEIR and technical appendices fail to provide data on recreation comparable to that collected to support such issues as traffic and transportation. If there is not a clear understanding of recreational use, there cannot be an accurate understanding of the DCP's impacts or an appropriate response via mitigation measures. Recreation is second only to agriculture in contributing to the Delta region's economy. According to the Economic Sustainability Plan (ESP) 2020 update, visitors to the Delta region generated a total of 12 million visitor-days of use annually in 2020 with a direct economic impact of more than \$250 million in spending. This included approximately 8 million resource-related (e.g., boating and fishing) visitor days of use per year, 2 million urban parks-related (e.g., golf, picnic, and turf sports), and 2 million right-of-way-related (e.g., bicycling and driving for pleasure) recreation visitors per year. Most of this visitation occurs in interior areas of the Delta that will be largely impacted by the DCP. The ESP Recreation Update noted that most spending occurs in Legacy communities and marinas, some of the areas hardest hit by DCP construction. Some issues the Economic Sustainability Plan (ESP) Recreation update identified relevant to the impact of the DCP include an alarming decrease in the number of marinas in the Delta since 2008, from 112 to 97 in 2020, as well as a decline in recreation-related establishments located in the primary zone, from 96 in 2008 to 70 in 2020. Furthermore, the number of boat builders in the Delta has dropped by 20%, along with declines in most other boating-related services. In the Commission's comments on the NOP, we recommended that DWR assess and mitigate recreation impacts using up-to-date information at key locations. However, minimal data was collected on recreational use in preparation of the EIR. Unlike, for example, traffic data for the Final EIR Transportation Chapter 20, the Recreation Chapter 16 is a literature search and scant documentation of actual use, which is wide-ranging and both formal and informal. Substantial evidence in the record shows that in resource areas such as traffic and transportation routes that are of concern to DWR for the purposes of construction and operation of the tunnel, the FEIR contains extensive data collection to identify impacted areas. In Table 20A-1 of the FEIR, 120 roadway segments were identified for analysis and Appendix 20C, Delta Conveyance 2040 Traffic Analysis. It is unacceptable that data collection for recreation, a major driver of the Delta economy, was not nearly as comprehensive as traffic data. Interviews were conducted with only eight recreation providers, none in Contra Costa or Alameda counties. Only one marina operator was interviewed, despite there being dozens of marinas along the tunnel alignment whose visitation could be impacted by construction. No bait shops, boat builders, or other recreation service providers were included, despite the fact that these businesses can provide their visitation numbers and will undoubtedly be affected by construction and road closures at the very least. The numerous marinas throughout the Delta provide RV spaces and visitor travel crisscrossing from one part of the Delta to another is common. The FEIR itself identified the field reconnaissance as "limited" and undertaken on two days in February. Data

such as the number of marina berths, camping and RV spaces, and miles of known bank fishing areas along the waterways could have documented recreational use that occurs far more widely across areas of the Delta than characterized in the Final EIR. As a result, proposed project impacts are underestimated in the Final EIR, and recreation impacts were determined to be Less Than Significant. DWR's adherence to CEQA's analytical requirements, rather than the independent substantive requirements of the Delta Plan, resulted in a profound under-documentation of recreational uses and associated impacts, much as it did in the Lookout Slough project. Merely identifying changes in the physical environment failed to reveal informal recreational activities such as bank fishing, or undocumented uses of closed areas such as Bethany Reservoir where vehicular access was closed but many fishers simply drive, park, and ride a bicycle to their favorite fishing spot. Project features that would result in above-ground physical changes to the environment that potentially would be near existing recreation facilities and use areas, include: • Intake structures (all alternatives); • Geotechnical and field investigations; • Bethany Complex, including pumping plant and surge basin, and discharge structure (Alternative 5); • Reusable tunnel material (RTM) areas (all alternatives); • Shaft sites (all alternatives); • Lower Roberts Island levee improvements; • Temporary and permanent access roads (all alternatives); • Aboveground transmission lines (all alternatives); • Temporary concrete batch plants and fuel stations (all alternatives); and • Compensatory mitigation (all alternatives). At Lower Roberts Island, long-term levee construction activities associated with the Lower Roberts complex will directly affect the Turner Cut and Tiki Lagoon Resorts. Windmill Cove Marina will also likely see major disruptions due to construction noise and activities associated with the construction and use of a rail spur and road from the Port of Stockton over the 13-plus year duration of the launch shaft facility and tunnel boring. B. The DCP's inconsistency with G P1(b)(3) requiring best available science will have a significant adverse effect on the coequal goals and undermine the Delta Plan. The proposed DCP is inconsistent with G P1(b)(3) for Delta recreation because DWR has not considered best available science for identifying and analyzing impacts on Delta Recreation. If carried out as proposed, without use of best available science, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of Delta recreation and the economic foundation it brings to Delta communities and residents. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, including Delta's recreation, the DCP undermines and is inherently inconsistent with, the Delta Plan. Conclusion Based on the foregoing discussion, DWR's Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(3) for recreation. [DPC_251117 Intro and 29773 Letter.pdf](#), [Attachment-A_Maps.pdf](#), [Attachment-F_DCP Inconsistency with G P1\(b\)\(3\)-best available science.pdf](#)

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

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

Yes, Inconsistent

Inconsistency: Respecting Local Land Use The project is inconsistent with the requirement to respect local land use when siting water facilities. -----

Delta Plan Policy: DP P2 (23 California Code of Regulations (CCR), section 5011), regarding respecting local land use when siting water facilities A. The Delta Conveyance Project Inconsistent with DP P2 and Does Not Protect the Delta as an Evolving Place The Delta Reform Act provides that the coequal goals shall be achieved “in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Pub. Resources Code, section 29702(a); Water Code, section 85054.) DWR’s Certification of Consistency has not adequately demonstrated through data in the record that the Delta Conveyance Project (DCP) fulfills the Delta Reform Act’s policy of protecting and enhancing the Delta as an evolving place (Delta as Place) (Water Code, Section 85020(b)). This is in part articulated in DP P2. The DCP is an existential threat to small Delta communities. DCP will put the long-term sustainability of small Delta communities in serious jeopardy in countless ways: • Over a decade of widely dispersed, effectively simultaneous construction. • Associated traffic impacting already-congested roads. • Disruption of businesses made inaccessible to tourists and residents alike. • Conversion of highly productive agricultural land that forms a crucial economic base. • Disruption of the secondary economic driver, land and water-based recreation. •

Answer Justification:

Deterioration of already fragile residential enclaves due to noise, dust, nighttime glare and emissions. It also fails to offer sufficiently detailed and adequate mitigation for such impacts. The Commission’s position is that the DCP is not consistent with DP P2 for this among many reasons. 1. CEQA AND DP P2: The Delta as Place policy and DP P2 not connected to CEQA concepts of mitigation adequacy. Importantly, Delta Plan consistency is a requirement of the Delta Plan, independent of any analytical or mitigation requirements of CEQA. Consistency with the Delta Plan must therefore be judged through the language of the Delta Reform Act, its implementing regulations, and the Delta Plan itself, not simply through CEQA. Rather, it is a standalone, separately enforceable Delta Plan policy focused on protecting Delta as Place. Even if DWR attempted to mitigate some of these impacts, sweeping impacts to Delta communities remain and these impacts are inconsistent with DP P2. DWR contends that DCP is consistent with DP P2, stating, “While it is infeasible to site the project to fully avoid conflicts with existing Delta land uses, DWR adopted design changes, environmental commitments, and mitigation measures to reduce direct and indirect conflicts with these uses, including conflicts from project operations.” The Commission sees no substantial evidence in the record to support DWR’s contention that with this approach DCP is consistent with DP P2. In fact, a hallmark of DWR’s DP P2 consistency analysis is to understate substantially the overall effect of both the construction and operation of the project on the Delta by relying heavily on meeting narrow CEQA requirements only. 2. DCP Jeopardizes Longterm Sustainability of Small Delta Communities The Commission’s review of the record finds that DCP cannot “avoid or reduce conflicts . . .

when feasible” to the degree required to meet the full obligation of DP P2. That is because the project adopted design changes, Environmental Commitments and mitigation measures have not produced a project that can be achieved “in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” DWR’s supporting findings identify numerous impacts to Delta communities associated with the DCP construction, including all of those listed above, leading to declining property values, blight, and abandonment. This presents an existential crisis for the small Delta communities that would be most affected by the protracted, intensive construction period, the permanent infrastructure, and the transformative effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. This project represents a massive, widespread shock – both during construction and in the aftermath. It will leave thousands of acres of permanent changes and often industrial-looking structures that will suddenly dominate landscapes in a region defined by incremental change and pastoral landscapes.

3. Failure to provide a complete picture of the overall impact of the project Certification of consistency with DP P2 is not possible without a clear articulation of project impacts across the spectrum of Delta landscapes. The Commission recommended, in our comments on the NOP, that the EIR tabulate the acreage and map the areas affected by every adverse or incompatible feature of the project, including:

- Direct and indirect land use conversions,
- Areas of noise in excess of standards for existing or proposed land use,
- Properties where road congestion to level D or worse, impairs access, and
- Harm to landscapes surrounding visitor destinations, or other project-related damage.

The Final EIR provides much of the above information, though in a set of tables and appendices that are difficult to absorb as an integrated whole. For this reason, to make a more comprehensible picture of the entirety of the project impacts, Commission staff has taken data from the Final EIR and DWR’s GIS files and developed a series of maps illustrating these impacts.

4. No demonstration of meaningful avoidance or reduction of conflicts for the Town of Hood Despite modifying aspects of the project to reduce impacts to Hood, DWR did not adopt mitigation measures that would meaningfully support the economic health and well-being of Delta communities, especially the town of Hood, to ensure that it will survive the construction, and it could do more to minimize the DCP’s impacts on the town of Hood. Included among these impacts are permanent damage to community character by the DCP project’s construction activities, including declining property values, blight and abandonment. The DCP project presents an existential crisis for small Delta communities, especially the town of Hood, which would be most affected by the protracted, intensive construction period, the permanent re-routing of State Route 160 (a Scenic Highway), the large new permanent infrastructure, and the effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. Construction of the two intakes, each with a sedimentation basin, drying lagoons (four at each intake) and the intake drop inlet itself will have the most disastrous effects on the community of Hood. The worst effects are enumerated by Final EIR Table 3D-1 and demonstrated by Attachment A, which visualizes the impacts. The two intake facilities, each occupying 1,500 feet of the Sacramento River banks, will bookend the town with construction. The intakes will require the installation of cutoff walls, with

associated dewatering. Cofferdams for dewatering will require impact pile driving for up to 15 hours for each intake. Vibratory pile driving will create additional, localized issues. According to the Final EIR, during dewatering of the river at the intake sites intakes, groundwater levels would be lowered to about -20 feet mean sea level via pumping and maintained at those levels during construction of facilities in the deeper excavations, such as the Sedimentation Basin; this dewatering could result in short-term lowered groundwater levels locally at neighboring supply wells. Construction of the facilities is projected to take place over a period of approximately 13 years according to the Final EIR's Project Description. The proposed mitigation for the groundwater impacts of dewatering, a "series" of groundwater recharge and extraction wells installed around the external perimeter of each intake cutoff wall system to allow discharge of captured dewatering water back into the subsurface, would only compound the construction disruption and noise. Yet, despite all the impacts described above, DWR's analysis of land use conflicts resulting from the North Delta Intakes, claims that substantial evidence in the record demonstrates that the intakes "will have minimal conflicts with housing when factoring in the measures to reduce conflicts described here. The Intake B and C sites are considered to have the least potential landside impacts because the fewest residential structures would be affected." Anyone who has ever lived next to or near a major construction site would likely dispute the notion of "minimal conflicts." DWR states, "Measures to Reduce Conflicts: The construction of the intakes is estimated to conflict with a total of five residential structures. Where applicable, DWR would provide compensation to property owners for losses due to the covered action to offset economic effects (Final EIR Volume 1, Chapter 14, Land Use, p. 14-23)." This doesn't address displacement of renters, or loss of a sense of place, or lost recreational values. Indeed, this fundamental point was noted in the Delta Independent Science Board (DISB) review of the Draft EIR: "Impacts to communities or populations that are deemed to be of no impact or less than significant using CEQA criteria could still constitute substantial concerns to particular communities within the Delta. An example is that the land use effect "Impact LU-1: Displacement of Existing Structures and Residences and Effects on Population and Housing" has a no impact rating, despite that "Between 61 and 93 permanent structures would be removed within the water conveyance facility footprint" (Chapter 14, page 14-22). Similarly, by assuming that recreation areas are largely substitutable, the CEQA recreation impact criterion fails to address the harms from lost use or inability to make low-cost or nearby substitutes specific to a lost recreation type." 5. No demonstration of avoidance or reduction of conflicts related to the Twin Cities Complex and Lower Roberts Island and Bethany Complex After the intakes, the largest landscape conversions will take place at the three major complexes of Twin Cities, Lower Roberts Island, and the Bethany pumping plant and surge basin. These complexes are also areas where the 13-year "temporary" acreage impact is more likely to be effectively permanent. The effectiveness of restoring agricultural lands once they have been excavated for the 200 or 300 foot-deep, 115-foot diameter double launch shafts is questionable, and since the "reclamation" of these sites is estimated to take approximately one year following tunneling work, it is not understood how the productivity of the land would be deemed equivalent to what it was prior to project construction. As acknowledged in the Final EIR, the effectiveness of

reclamation techniques is uncertain, so farmland areas targeted for such techniques are still considered to be permanently affected. The proposed DCP Twin Cities Complex will be located on Prime Farmland in the Secondary Zone immediately adjacent to Interstate 5, occupying 586 acres during construction and 222 acres permanently. The Twin Cities Complex includes areas for additional drying of tunnel muck as well as long-term storage, as do both the Lower Roberts and Bethany locations. The Final EIR evaluation of impacts to agriculture includes numerous instances at locations such as these in which it is deemed “not practicable” to avoid Important Farmland (i.e., lands ranging from Prime to Farmland of Statewide Importance, to Farmland of Local Importance) in siting tunnel muck storage. The DCP is expected to utilize approximately 403 acres of Important Farmland for tunnel muck drying and stockpiling. To accommodate a double launch shaft, farmland conversion at the Lower Roberts Island Complex is even larger, with approximately 610 acres during construction and permanent impacts to 300 acres. The Bethany Complex adds a massive amount of excavation in the Secondary Zone near Mountain House for the Bethany Complex, including a pumping plant, surge basin with reception shaft, a buried pipeline aqueduct system, and a discharge structure to convey water to Bethany Reservoir. Excavation of the 815 feet wide x 815 feet long by 35 feet deep surge basin will produce 1,171,060 cubic yards of soil, much of which will be stockpiled onsite and will require engineering described by the Delta Conveyance Design and Construction Authority independent review experts as on the outer edge of industry practice. Even under the EIR’s own conclusions, these are permanent impacts to existing uses that are, therefore, inconsistent with DP P2. B. The DCP’s Inconsistency with Delta as Place and DP P2 Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan. The proposed DCP is inconsistent with Delta as Place and DP P2. If carried out as proposed, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP’s goal is water supply reliability, but at the expense of the Delta, as we demonstrate below. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to “protect and enhance” Delta values, the DCP undermines and is inherently inconsistent with the Delta Plan. In its consistency determination, DWR’s baseline premise is that “it is infeasible to site the project to fully avoid conflicts with existing Delta land uses,” and that it “adopted design changes, environmental commitments, and mitigation measures to reduce direct and indirect conflicts with these uses, including conflicts from project operations.” What it did not do, but could feasibly have done, is consider an alternative to the project that respects the Delta as an evolving place. 1. Other Options Not Adequately Considered DWR failed to adequately consider other possible options that could ensure water supply reliability and ecosystem health while also respecting the Delta as an evolving place. The alternatives it did consider were conceptually similar. While the Final EIR provides some of that information, it did not take the further step of seriously assessing the full extent of land use conflicts to each component that comprises the Delta as Place values enshrined in the Delta Plan, the Commission’s Land Use and

Resource Management Plan, and numerous other local government land use plans. Rather, the extensive comparisons of alternatives are meaningfully no different than the proposed project, as suggested by the DISB in comments on the Draft EIR when it offered a table of alternative comparisons. While the CEQA process provided DWR an opportunity to complete these kinds of analyses, elements of DP P2 go beyond the legal requirements of CEQA. Whether or not the Final EIR included such analyses, substantial evidence in the record does not clearly show elements such as these to demonstrate consistency with DP P2. In short, over the many years DWR has worked to develop a successful Delta Conveyance Project, DWR has failed to grapple with the reality, demonstrated through evidence in the record, that the DCP puts the long-term sustainability of small Delta communities in serious jeopardy. This is not a new issue but is the fundamental inconsistency that has dogged the DCP and its predecessors, due in part to DWR's insistence on the proposed point of diversion, but more importantly, to its refusal to consider legitimate alternatives such as the portfolio approach. 2.

Alternatives to the Proposed DCP Alternative choices were flawed from the start. As described above, impacts to the town of Hood will be devastating. They point directly to a fundamental flaw of design decision making from the beginning: choosing the proposed diversion location through a process entirely decided by engineers and fish biologists without consulting local land use authorities, reinforced by the insistence on calling it a "change" in the point of diversion from the existing location, rather than a new water right. In many ways, this top-down approach sets the stage for DWR's persistent unwillingness to consider real alternatives to the tunnel project. Improve through-Delta conveyance and reduce reliance on exports. The Delta Protection Commission has repeatedly advocated through-Delta conveyance as alternatives to the DCP and its predecessors. It advocates promoting water reliability by strengthening Delta levees and dredging key Delta channels, while also reducing other regions' reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies. Such a "portfolio" approach to addressing the concerns of water supply reliability, sea level rise and perceptions – whether well-founded or not – of seismic risk has been proposed in varying combinations and levels of detail, but never considered by DWR in alternatives analysis. The lack of meaningful alternatives is the first element of DWR's failure to respect local land use within the meaning of the Delta Plan. The Final EIR wasted significant resources with meaningless "alternatives" that all had essentially the same destructive impact on the Delta. The Delta Independent Science Board (Delta ISB), in its review of the DCP Draft EIR, noted this fundamental flaw: 4.7. Diversity of project alternatives is narrow The alternative conveyance structures considered in the draft EIR are conceptually similar and do not fully reveal the rationale behind each selected alternative. While the alternatives cover a reasonable range of Delta tunnel capacities, they only consider three tunnel alignments (central, east, and east + Bethany PP) and omit several western Delta alignments and through-Delta canal alternatives that have been discussed in past planning. Although it is not feasible or desirable to compare all possible alternatives, a comparison of a broad range of project options is consistent with an objective approach to finding the most environmentally and socially beneficial solution. [emphasis added] For example, two of the major purposes for the conveyance structure are to reduce risk to water supply

from seismic events and sea level rise. Both hazards could cause levee failures that would threaten State Water Project deliveries. An alternative approach to address these threats, such as extensive remediation to improve levee stability in the Delta, was not evaluated. At a minimum, the rationale for omitting earlier versions of project alternatives would help stakeholders and decision makers understand the full range of options available and constraints to meeting the objectives. [emphasis added] The issue of seismic risk as an objective of the project remains particularly galling to Delta people. If there is a significant risk to the Delta levee network, the tunnel would not address it, because according to DWR's own statements 80% of exported water would still be conveyed by through-Delta channels after tunnel construction is complete. Furthermore, there are serious challenges to the level of risk as a justification for all the damage the tunnel would cause, as highlighted by the DISB's assertion that "seismic risk may be overstated." The DISB expresses concern that the evidence supplied in the Final EIR misrepresents where the probability of a major earthquake applies (i.e., to the greater Bay Area and not to the Delta) and furthermore is confusing and not well documented. The project's Final EIR rejected alternatives suggested by local government representatives such as the Delta Counties Coalition, which promotes strengthening critically located levees, upgrading existing infrastructure, expanding water recycling, and building resilient storage above and below ground. The Commission recommends considering a portfolio alternative, that would include a combination of measures such as these. The 2023 Delta Residents Survey found the following: • 87% - the Delta is an important agricultural region • 80% - the Delta is important as California's water hub • 73% - the Delta is a good region for outdoor recreation • 68% - the Delta holds cultural and historical importance In addition, residents value the Delta for quiet and solitude (67%), scenic beauty (51%) and access to waterways (34%). Clearly Delta people understand the importance of the Delta's critical role in California's water system, but also understand and value the many attributes that define the Delta as a place. DWR has not established why an alternative that respects these Delta values and provides contributions to California's water supply was not considered. Conclusion DP P2 provides that: "Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission." The DCP does not conform with this policy because it has not been sited to avoid conflicts with existing uses, it has not demonstrated that it is not feasible to achieve the DCP goals with an alternate siting that would avoid these conflicts, and it has not adequately engaged with or considered the comments of the Commission to date. Based on the foregoing discussion, DWR's Certification of Consistency fails to establish, with substantial evidence, that the DCP is consistent with DP P2 and Delta as Place. [DPC_251117 Intro and 29773 Letter.pdf](#), [Attachment-A_Maps.pdf](#), [Attachment-B_DCP Inconsistency with DP P2.pdf](#)

11/17/2025