

# ***Appeal of Certification of Consistency***

**C20257-A10**

## **Step 1 - Appellant(s) Information**

Appellant Representing: DCC Engineering Co., Inc.  
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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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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

Covered Action Description: 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 5

[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

Answer Justification:

DP P2 Appeal – Construction Market Impacts on Communities, Agriculture, Flood Protection, and Delta Land Uses The Delta Conveyance Project will place unprecedented demand on the Delta’s limited supply of civil-construction resources, including rock, riprap, aggregate, sheetpile, heavy equipment, trucking, barge operations, and contractors with levee-maintenance qualifications. Because Reclamation Districts rely on these same resources to maintain the levees, drainage systems, agricultural lands, transportation corridors, and legacy communities that define the Delta’s cultural and economic identity, the DCP’s long-term monopolization of these resources will directly impair the Delta’s existing land uses. Legacy towns such as Courtland, Hood, Walnut Grove, Clarksburg, and Locke depend on properly maintained levees to protect homes, businesses, roads, and historic structures located at or below river level. Agriculture depends on erosion control, stable levee geometry, interior drainage, and pump-station reliability. The State’s water-supply system depends on these same levees to convey fresh water through the Delta for the next 15–20 years until the tunnel is operable. Local transportation networks depend on levees that do not slough, settle, or erode. DCP construction will significantly escalate material costs, reduce contractor availability, and delay critical levee and drainage maintenance required under Title 23 and the Delta Levees Subventions Program. This will degrade the physical landscape and the long-term viability of Delta communities and agriculture in direct conflict with Delta Plan Policy DP P2. The Certification of Consistency does not evaluate these foreseeable impacts and therefore fails to demonstrate consistency with DP P2.

#### DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - Prioritization of State Investments in Delta Levees and Risk Reduction

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

Yes, Inconsistent

Answer Justification:

Authority, Evidence, and Argument Supporting Inconsistency Delta Plan Policy RR P1 governs prioritization of state investments in levee operation,

maintenance, and improvements. The DCP Certification states RR P1 is “not applicable” because the project “involves no investment in Delta levees or flood-risk reduction.” This determination is incomplete and incorrect. Although the DCP does not construct levees, it depends on the Delta levee system for through-Delta water conveyance during the entire 15–20-year construction period and for operations following completion of construction. The project will also compete directly with Reclamation District’s (RDs) regionally for rock, riprap, aggregate, contractor availability, and heavy civil equipment, all essential inputs for levee maintenance, emergency response, and rehabilitation. RR P1 requires DWR to evaluate: • engineering considerations, • costs, • benefits, • and impacts to state interests protected by levees. The Consistency Certification provides no analysis of: • inflationary effects of multi-billion-dollar construction demand on Reclamation District (RD) O&M budgets, • RD reduced cost-share feasibility with State funding programs due to lost revenue from land conversion and impacts to agriculture as a result of the DCP, • reduced contractor availability for small public agencies, • or the risk that under-maintained levees pose to SWP/CVP water-supply reliability during tunnel construction. DWR cannot avoid compliance with RR P1 by simply declaring it inapplicable. Significant Adverse Impact on Coequal Goals or Flood-Control Programs The failure to evaluate RR P1 consistency creates significant risks to: • Water Supply Reliability: through-Delta conveyance remains essential during construction. Undermining RD maintenance capacity increases the probability of levee failure. • Flood Protection: RDs are local maintaining agencies responsible for protecting people, property, agriculture, and critical infrastructure. Escalating material/contractor costs induced by the DCP impede their ability to meet basic O&M requirements. The DCP cannot meet RR P1 when the project causes widespread strain on the levee-maintenance system relied upon to achieve the coequal goals.

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[RR P3 / Cal. Code Regs., tit. 23, § 5014](#) - **Protect Floodways**

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

Yes, Inconsistent

**Answer Justification:**

Authority, Evidence, and Argument Supporting Inconsistency Delta Plan Policy RR P3 prohibits covered actions from encroaching in a floodway in a manner that would reduce floodway capacity, impair conveyance, or increase flood risk. The DCP Certification states that RR P3 is “not applicable” because the project “does not include any proposed actions that will encroach in a floodway that is not either a designated floodway or regulated stream.” This finding is inaccurate. The covered action does physically encroach on levees and their associated floodways where intake structures, access ramps, barge/transportation facilities, and construction pads are located directly on or immediately adjacent to levee embankments. These levees form the legal boundaries of the State Plan of Flood Control (SPFC) and non-project levee floodways that convey Sacramento River, Mokelumne River, and tributary slough flows. Encroachment occurs when a project places fill, structures, ramps, excavation, or construction features within the levee prism or within the functional floodway. The DCP’s construction activity physically alters: • levee geometry, • slope stability, • access for flood-fight operations, and • high-water conveyance conditions during prolonged construction. RR P3

does not require that the floodway be “designated” for the policy to apply, it applies to any floodway that conveys floodwaters in the Delta (including natural channels, regulated streams, and levee-lined river reaches). The Certification relies on an overly narrow interpretation that excludes the practical functioning of floodways defined by levee spacing and river hydraulics. The DCP’s physical encroachment into these levee-adjacent floodways therefore triggers RR P3, and DWR’s determination that RR P3 is “not applicable” is unsupported. Furthermore, the Certification contains no analysis of: • how levee-top and near-levee construction will restrict RD flood-fight access; • how reducing access or altering levee geometry impacts floodway conveyance; • whether construction pads and ramps reduce freeboard or increase roughness; • cumulative effects of long-term (10–20 year) construction staging; • whether excavations at the levee toe affect seepage, slope factors of safety, or stability during high water. These omissions constitute a failure to evaluate potential encroachment-related impacts required by RR P3. Significant Adverse Impact on Coequal Goals or Flood-Control Programs By encroaching on levees and levee-adjacent floodways without adequate analysis or mitigation, the DCP creates substantial risk to: • Flood protection for legacy communities, which depend on levees for public safety; • Agricultural lands, which rely on levee integrity and floodway performance for crop viability; • Transportation routes that run along or atop levees; • Through-Delta water-supply corridors, which require fully functioning floodways and levees to maintain sufficient capacity and safe conveyance. Physical encroachments can impair floodway function by: • reducing conveyance during high-water events, • altering levee slope stability, • restricting emergency access for flood-fighting, • creating constrictions or obstructions, • increasing the risk of erosion or sloughing, • generating long-term deformation or settlement under heavy equipment, • and delaying necessary RD maintenance. Any of these effects would significantly disrupt a government-sponsored flood-control program and undermine both coequal goals: water-supply reliability and Delta ecosystem protection. Because the DCP requires levees to remain functional for the entire duration of construction (15–20 years or longer) and for the operations into the future, failing to evaluate and mitigate floodway encroachment is a material inconsistency with RR P3. Conclusion RR P3 does apply to the DCP because the project does physically encroach on levees and floodways, and these encroachments have the potential to impair floodway conveyance, levee stability, RD operations, and community safety. The Certification’s determination of non-applicability is factually incorrect and unsupported by the record. As a result, the Certification does not comply with RR P3.

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**11/17/2025**