

Appeal of Certification of Consistency

C20257-A2

Step 1 - Appellant(s) Information

Appellant Representing: Courtland Pear Fair
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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
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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 5

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - Locate New Urban Development Wisely

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

Yes, Inconsistent

Answer Justification:

1. DP P1 – Locate New Urban Development Wisely (Cal. Code Regs., tit. 23, § 5010) This appeal asserts that the Delta Conveyance Project (DCP) is inconsistent with Delta Plan Policy DP P1 and that DWR’s determination that DP P1 is “not applicable” is erroneous and unsupported by substantial evidence. Key authorities: 1. Water Code § 85054 (coequal goals, including protection of the Delta as an evolving place). 2. Delta Plan Policy DP P1 (Cal. Code Regs., tit. 23, § 5010), which: a. Limits new residential, commercial, and industrial development to designated areas, expressly including “the unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove.” b. Allows new development outside those areas only if consistent with county general plans and the Delta Plan. c. States the policy is intended to protect agriculture and the open, rural landscape and reduce risks to people and property. Evidence from the Certification (C20257) and Detailed Findings 1. DWR classifies DP P1 as “not applicable,” solely because the project is a “State government use.” o The Detailed Findings of Consistency state that DP P1 is a “Delta Plan Policy Not Applicable to the Covered Action” and conclude: “This policy is not applicable to the covered action because the covered action does not involve residential, commercial, or industrial development.” o DWR further asserts that “the covered action structures will be a government use... These structures are considered governmental public use and not new permanent residential, commercial, or industrial development.” 2. The administrative record confirms that the covered action consists of large-scale, permanent, industrial-type facilities in and adjacent to the unincorporated Delta towns DP P1 expressly covers. o The Certification describes the covered action as new SWP diversion and conveyance facilities including: two intakes along the Sacramento River near Hood; a 45-mile concrete-lined tunnel and shafts; a new pumping plant at Bethany; and multiple “ancillary facilities” including access roads, concrete batch plants, fuel stations, and power transmission and distribution lines. o The project footprint, as summarized in the Certification, places major construction and operation features immediately adjacent to Hood and Courtland and along SR-160, within the Delta Primary Zone and rural

agricultural landscape that DP P1 and the Delta Protection Commission are expressly intended to protect. 3. DP P1's own text and problem statement show that its focus is land-use pattern and urbanization pressure, not the ownership label of the proponent. o The Detailed Findings quote the Delta Plan's problem statement: "By limiting significant new development to areas currently designated for development in cities, their spheres of influence, and unincorporated towns, the Council intends to foster a land use pattern that enhances the Delta's unique sense of place by protecting agriculture and the open, rural landscape while reducing risks to people and property."

o DP P1 expressly includes Courtland and Hood among the unincorporated Delta towns whose development must be tightly managed. Argument: Why the DCP is inconsistent with DP P1 and how that harms the coequal goals 1. Misapplication of DP P1 o DP P1 is triggered by land-use effects of "new residential, commercial, and industrial development" and "urban land uses," not by the ownership status of the facilities. The DCP's permanent intakes, tunnel portals, batch plants, and related structures are functionally large industrial-scale facilities in the middle of agricultural and small-town landscapes, exactly the kind of urban/industrial encroachment DP P1 seeks to manage. o By defining these facilities as categorically "governmental" and therefore outside DP P1, DWR adopts an interpretation that nullifies DP P1 for the most impactful infrastructure possible: any large industrial-type project can avoid DP P1 simply by being state-sponsored. That reading conflicts with the plain intent of the policy and its problem statement in the Delta Plan. 2. Failure to analyze consistency with local land-use designations and character for Hood and Courtland. o Sacramento County's general plan designates lands adjacent to Hood and Courtland as agricultural and open space uses; the Detailed Findings recognize the Delta Protection Commission's role to "protect agricultural land, recreational uses, and biological diversity in the Delta's Primary Zone from urban development ... and ensure the economic vitality of Delta agriculture." o Nevertheless, the Detailed Findings treat DP P1 as "not applicable" and never evaluate whether placing permanent industrial-scale water infrastructure and long-term construction yards adjacent to Courtland and Hood is consistent with maintaining agricultural land and rural community character, as required by DP P1 and county general plan policies. 3. Significant adverse impact on the coequal goal of protecting the Delta as an evolving place (Water Code § 85054). o The DCP's 13-year construction window (2029–2042) is acknowledged in the Certification. o During this period, Courtland, home to the Courtland Pear Fair, a more-than-50-year volunteer-run agricultural festival central to local identity, will experience prolonged heavy truck traffic, detours, noise, and industrial activity along the same routes and in the same landscape that the Fair depends upon (SR-160 / River Road access and the surrounding pear orchards). o For a volunteer-run event with minimal reserves, even a few years of reduced attendance or volunteer relocation can destabilize the event; a 13-year industrial construction footprint spanning an entire childhood cohort threatens the permanent loss of a key cultural institution. That is a significant adverse impact on the "Delta as place" coequal goal and directly contrary to DP P1's intent to protect rural character and agricultural communities. 4. How the inconsistency affects the Delta economy. o The Pear Fair and associated agricultural tourism are part of the economic and social fabric that supports local Delta business. Destabilizing Courtland's community institutions and rural land-use pattern

will harm local businesses that serve the Delta community and tourists. It will no longer be a destination for travelers or a desirable place to live and work. These local businesses operate on such small margins that increased tourism associated with Pear Fair and other Delta events makes a difference and can upend the economic viability of the North Delta. Conclusion (DP P1) In conclusion, the certification is inconsistent with DP P1 because it: • Treats DP P1 as inapplicable based solely on ownership, despite constructing industrial-scale facilities in and adjacent to Courtland and Hood, which DP P1 expressly addresses; • Fails to analyze whether those facilities are consistent with agricultural and open-space designations and small-town character; and • Fails to evaluate or mitigate the resulting long-term threat to core cultural institutions such as the Courtland Pear Fair; This will cause a significant adverse impact on the coequal goal of protecting and enhancing the Delta as an evolving place. The Consistency Determination must therefore be overturned or remanded as to DP P1.

[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:

2. DP P2 – Locate New Urban Development Wisely (Cal. Code Regs., tit. 23, § 5011) This appeal also asserts that the DCP is inconsistent with Delta Plan Policy DP P2. Key authorities: 1. Delta Plan Policy DP P2 (Cal. Code Regs., tit. 23, § 5011), which requires that siting of water management facilities be done so as to “avoid or reduce conflicts with existing land uses when feasible” and to respect local land-use designations and community character. 2. Water Code §§ 85054, 85300–85302(c) (Delta as an evolving place; protection of cultural, recreational, and agricultural values). Evidence from the Certification (C20257) and Detailed Findings 1. DWR claims DP P2 consistency based on “Existing Land Uses Conflicts Analysis” and stakeholder outreach. o The Certification justification states that “based on substantial evidence in the record, DWR has determined that the covered action’s facilities are situated in such a way to avoid or reduce conflicts with existing land uses when feasible,” and relies on DP P2 Attachment 1 (Existing Land Uses Conflicts Analysis) and DP P2 Attachment 2 (Operations Effects) for this conclusion. o The Detailed Findings section for DP P2 repeats that DWR has determined the covered action is consistent with DP P2 and that siting conflicts were reduced through design changes, environmental commitments, and mitigation measures. 2. The Detailed Findings show that “existing land uses” were treated primarily as physical agricultural and infrastructure uses, not as cultural/community uses such as the Courtland Pear Fair. o DP P2 Attachment 1 is summarized as analyzing “constraints to siting the covered action, efforts that were made to reduce or address siting conflicts, and information sources used in the consistency analysis, including comments from local agencies and consideration of existing uses in the Final EIR.” o The description of outreach emphasizes comments from “local and regional entities, Tribes, and local landowners and users of Delta resources”; however, the outreach table in Chapter 4 lists numerous fairs and festivals (e.g., Bass Derby and Festival in Rio Vista, Locke Asian Pacific Spring Festival, various Stockton cultural events) but does not list the Courtland Pear Fair despite its status as the primary agricultural festival in Courtland. 3. The same Detailed Findings describe and rely on a Community Benefits Program

and CBAs, including Courtland-related CBAs, but none specifically identify or protect the Courtland Pear Fair. o The Community Benefits Program is described as a \$200 million fund with components including CBAs, intended in part to “protect and enhance” the Delta’s cultural, recreational, and agricultural values. o Table 4-1 lists draft CBAs for the Courtland Fire Protection District (replacement fire station) and Courtland Town Association (funding plus an endowment for CTA operations), but no CBA directed to the Pear Fair or equivalent cultural institution. 4. The project description confirms long-term, high-intensity construction and operation adjacent to Courtland and Hood. o The Certification describes intakes near Hood, a 45-mile tunnel, and multiple construction and ancillary facilities. o Project timeline is acknowledged as 2029–2042. Argument: why the DCP is inconsistent with DP P2 and how that harms the coequal goals

1. Failure to identify the Courtland Pear Fair as an “existing land use” or cultural/community resource in the DP P2 analysis. o DP P2 requires siting to respect existing land uses and local land-use designations, which in the North Delta plainly include not only pear orchards and levee roads but also long-standing community institutions that occupy and animate those spaces, such as the Courtland Pear Fair, a volunteer-run agricultural festival of more than 50 years’ duration. o The orchards and agricultural operations that surround Courtland will be adversely affected, through land conversion, reduced productivity, or degraded operating conditions, undermining their economic viability. These farms provide critical financial sponsorships for the Courtland Pear Fair, meaning harm to local agriculture translates directly into harm to the Fair’s continued operation. o Despite its prominence as Courtland’s signature event, the Detailed Findings’ outreach table shows that DWR engaged other fairs and festivals but did not identify or consult with the Courtland Pear Fair. o This omission is not a mere procedural gap; it means the DP P2 land-use conflicts analysis never considered the Fair’s dependence on reliable access via SR-160, small-town scenic conditions, and a stable base of local volunteers. 2. Failure to analyze traffic and access conflicts with the Courtland Pear Fair and similar community events. o The DCP will generate substantial construction traffic, haul routes, and potential detours along SR-160 and River Road during the same summer period when the Pear Fair occurs. The Certification acknowledges extensive new access roads, bridge modifications, and related transportation improvements as part of the covered action. o For a volunteer-run event operating on a narrow budget, even one or two years of reduced attendance due to traffic, detours, or perceived construction disruptions can undermine the Fair’s viability; over a 13-year construction window, the risk of permanent loss is substantial. o Yet the Detailed Findings for DP P2 contain no project-specific analysis of how construction and operational traffic patterns will affect the Pear Fair’s access, attendance, or volunteer capacity. This is a failure to proceed in the manner required by DP P2. 3. Improper reliance on CBAs and a generalized Community Benefits Program instead of siting-based conflict avoidance and enforceable mitigation. o The Community Benefits Program is framed as a discretionary program “to identify opportunities for local benefits,” not as mitigation under DP P2. o The Courtland-related CBAs identified in Table 4-1 are limited to a new fire station and a CTA-directed endowment; there is no commitment to protect or sustain the Pear Fair, no requirement to maintain access and traffic conditions compatible with the event, and no enforceable guarantee that any funds will be used to offset

impacts to cultural institutions. o Relying on CBAs as a substitute for impact avoidance improperly replaces DP P2's mandatory siting and mitigation requirements with voluntary, future agreements that may never materialize. DP P2 requires conflicts to be avoided or reduced now, at the time of the consistency determination, not deferred to speculative community benefit negotiations. 4. Significant adverse impact on the coequal goal of "Delta as place" o The Courtland Pear Fair is a central expression of the North Delta's agricultural identity and community cohesion. Its loss or weakening due to prolonged industrialization and access disruption would be an irreversible adverse impact on Delta culture, contrary to Water Code § 85054 and § 85302(c). o The same cultural and economic networks that sustain the Pear Fair also underlie local assessments and political support for reclamation districts and levee maintenance programs. Long-term erosion of community institutions due to siting conflicts reduces the resilience of these government-sponsored flood control programs that protect people and property in the Delta. 5. DWR determined DP P2 consistency without fully analyzing feasible alternative siting options that would have reduced or avoided conflicts with existing land uses in the North Delta and along the SR-160 corridor. (Article linked here: [Delta Conveyance Project Alternatives Screening Process](#)) o Despite repeated input in other permitting forums, DWR dismissed alternative facility locations, such as Sherman Island and the Deep Water Ship Channel (DWSC) corridor, on the grounds that they did not meet project objectives, and therefore never subjected them to a meaningful DP P2 analysis. As a result, the same intake and tunnel sites first proposed at the project's inception have been carried forward with no deference to community-identified alternatives that would reduce impacts on Delta towns. This approach bypasses DP P2's requirement to evaluate siting choices that avoid land-use conflicts when feasible. o Feasible alternatives were in fact available. Sherman Island, already owned and managed by the State of California and isolated from residential and cultural uses, presents a location for major conveyance facilities that would not affect small agricultural communities. Likewise, the DWSC/West Sacramento corridor, an urbanized, industrialized waterfront with existing water-related infrastructure and located outside the Delta Primary Zone, provides another viable siting option. Either location would have substantially reduced or eliminated conflicts with agricultural land uses in Hood and Courtland and avoided impacts to cultural institutions such as the Courtland Pear Fair. o The Consistency Determination does not evaluate these alternatives according to land use impacts, despite DP P2's clear mandate to avoid or reduce land-use conflicts when feasible. By failing to consider alternatives in this way could prevent the very conflicts DP P2 seeks to address. Conclusion (DP P2) In conclusion, the certification is inconsistent with DP P2 because it:

- Never identifies the Courtland Pear Fair as an existing land use or cultural/community resource within the DP P2 analysis;
- Do not evaluate how long-term construction and operational traffic, industrial noise, and visual impacts will affect the Fair's access, attendance, or volunteer base;
- Rely instead on discretionary CBAs and a Community Benefits Program that may or may not address cultural resources and that contains no enforceable protection for the Pear Fair; and
- Fail to show that DCP facilities were sited in a way that avoids or reduces conflicts with Courtland's community institutions when feasible;

These will have a significant adverse impact on the coequal goal of protecting and enhancing the Delta as an evolving place.

The Consistency Determination must therefore be overturned as to DP P2.

11/17/2025