

**November 27, 2024 Written Submission in
Support of Appellants
County of San Joaquin, Central Delta Water Agency,
and Local Agencies of the North Delta
(Appeal No. C20242-A4)
for December 19, 2024
Delta Stewardship Council Hearing on the Appeals**

**Regarding the
October 8, 2024 Certification of Consistency (C20242)
for the DWR 2024-2026 Proposed
Geotechnical Activities for Delta Tunnel**

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**DWR 2024-2026 Proposed Geotechnical Activities for Delta Tunnel
Consistency Appeal (Cert. ID: C20242)
November 27, 2024**

Introduction

This Written Submission is submitted on behalf of the County of San Joaquin (“County”), Central Delta Water Agency (“CDWA”), and Local Agencies of the North Delta (“LAND”) (collectively “SJC et al.”) in support of its appeal filed on November 7, 2024. The following issues are addressed in this submission:

1. Jurisdictional Issues
2. Inconsistency with Coequal Goals
3. Inconsistency with Delta Plan Policies
4. Evidentiary Submissions¹
5. Ongoing Closed Meeting and Ex Parte Communication Concerns

1. Council Lacks Jurisdiction to Consider the Covered Action as Submitted by DWR

As explained in the SJC et al. Appeal, the Council lacks jurisdiction over the Geotechnical Activities as a covered action in the form submitted by DWR. (SJC et al. Appeal, pdf pp. 5-7.) The Geotechnical Activities are not a separate covered action from the Delta Conveyance Project (“DCP”). (DCP.X2.1.00003, pp. 4, 11, citing Wat. Code, § 85057.5, subd. (a).) In addition, DWR’s attempt to divide a covered action into separate pieces would minimize the effect of the covered action subparts on the achievement of the coequal goals. (See Wat. Code, § 85057.5, subd. (a).) DWR’s proposed subdivision of the DCP into parts for purposes of consistency review is contrary to the Council’s statutory mandates and should be rejected. In addition, if accepted, such a subdivision of the project would undermine the ability of the Council to properly implement the mandates of the Delta Reform Act of 2009 with respect to future consistency certifications.

2. The Geotechnical Activities are Inconsistent with the Coequal Goals

As explained in the SJC et al. Appeal, the Geotechnical Activities, even if considered separately from the DCP, are inconsistent with the Coequal Goals. (SJC et al. Appeal, pdf pp. 10-12.) DWR fails to support its repeated claim that the Geotechnical Activities “will have no impact” on the achievement of one or both of the coequal goals (DCP.X2.1.00020 2024, p. 4-4) with substantial evidence. (See e.g., *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1006 [describing substantial evidence as being of ponderable legal significance, reasonable in nature, credible, solid value, and substantial proof].)

¹ Exhibits SJC-1, SJC-2, and SJC-3 were submitted with the SJC et al. Appeal on November 7, 2024. Exhibits SJC-4, SJC-5, and SJC-6 are attached to this Supplemental Brief. All of these exhibits are also being provided as separate files with this Written Submission.

Consistency with the Coequal Goals includes protection of the Delta as an evolving place, which is part of the Coequal Goals. (Pub. Resources Code, § 29702, subd. (a).) As explained by Mr. Van Loben Sels in 2013, the “Delta as a place is a third leg on a three-legged stool, the other two being water supply reliability and ecosystem restoration, and that the stool is the foundation of the entire plan,” that was developed in Delta Vision and later incorporated into the Delta Reform Act of 2009. DWR’s Certification, however, fails to even mention this requirement or provide any evidence in support of it. (See also, Exhibit SJC-3.)

DWR also fails to support its conclusion that the Geotechnical Activities would not have a substantial effect on protection of the Delta ecosystem. In particular, DWR entirely ignores information contained in its own environmental review of the DCP. (See Appendix 13E; DCP.D1.1.00117 [showing “Natural Landscape Blocks” and “Essential Connectivity Areas” clustered where the DWR proposes vast program of geotechnical work, with corresponding traffic, noise, light, and vibration over extended period].) DWR’s own environmental review documents show that the Geotechnical Activities would have a substantial effect on terrestrial wildlife connectivity and movement. (See Wat. Code, § 85057.5, subd. (a)(4).)

3. Inconsistency with Delta Plan Policies

DWR claims that the Geotechnical Activities do not need to be consistent with G P1(b)(2) or DP P2 in its Certification of Consistency. (See DWR Certification, pdf, pp. 4, 9; see also DCP.X2.1.00020, pp. 4-19 to 4-21, 4-12 to 4-13.) The Geotechnical Activities would disrupt the Delta for its two (plus) years of activity and is intended to support the eventual construction of the Delta Tunnel, which would involve over a decade of construction and even more significant changes to local land uses. Even if the Geotechnical Activities could be separated from the rest of the DCP as a covered action, DWR has failed to support its conclusions that these policies either do not apply, or in the alternative, that the Geotechnical Activities are consistent with them.

DWR’s Mitigation Measures are Inadequate and are Not Consistent with G P1(b)(2) Requirements

As explained in the SJC et al. Appeal, DWR has failed to support its determination that the Geotechnical Activities would be consistent with the Delta Plan Programmatic EIR (PEIR) mitigation measures, as required by G P1(b)(2) (Cal. Code Regs., tit. 23, § 5002). (SJC Appeal, pdf pp. 18-19.) While PEIR Appendix O has now been added to the record (DCP.X2.1.00032.pdf), the discussion in DWR’s Certification of Consistency and supporting documents does not substantiate a finding in this regard (DCP.X2.1.00020, pp. 4-22 to 4-68). Specifically, DWR fails to explain how applicable mitigation measures in the Delta Plan PEIR are being implemented, or how specified substitute measures in the DCP EIR are equally or more effective. Also concerning with respect to G P1(b)(2) is the fact that DWR lists compliance with measures that it considers to be inapplicable. Thus, DWR has not supported its consistency finding for G P1(b)(2) with substantial evidence.

The Project Is Not Consistent with DP P2

As explained in the SJC et al. Appeal, the Geotechnical Activities would disrupt agricultural, transportation and flood control facilities in the Delta for two (plus) years. These activities are also intended to support the eventual construction of the Delta Tunnel (a water management facility), which would involve over a decade of construction and even more significant changes to local land uses. (SJC et al. Appeal, pdf pp. 20-24.) As with the other Delta Plan policies, DWR errs in claiming that DP P2 does not apply to the Geotechnical Activities. (DCP.X2.1.00020 2024, pp. 4-12 to 4-13.) Even if the placement of grout is not considered a permanent component, the purpose of the Geotechnical Activities is to support the siting and construction of water management facilities that will leave permanent facilities on agricultural land, the geotechnical activities.

As explained in Exhibit SJC-3, there are long term risks and challenges associated with borings and CPTs placed on local landscapes. For instance, “[I]mproper exploration abandonment techniques in the Delta can create detrimental seepage conditions, particularly within, under, and/or adjacent to levees.” (Exhibit SJC-3.) While DWR claims it will comply with Bulletin 74-90 (SJC-2) for sealing of borings (DCP.X2.1.00005, pp. 7, 14), there is no independent oversight over DWR’s boring sealing activities. In fact, when counties sought to assert well-permitting authority over DWR for these activities, DWR challenged that authority and obtained a court ruling stating that the DWR was not required to obtain a permit from the county. (See, e.g., Exhibit SJC-4, pdf pp. 5, 13-14.)

DWR’s claim that DP P2 does not apply ignores the plain language of the policy and the relationship between the Geotechnical Activities and the DCP. In addition, DWR has not supported its consistency finding for DP P2 with substantial evidence.

4. Evidence Supporting This Appeal

The supporting documents cited herein and uploaded with this appeal were available to DWR prior to DWR’s filing of the consistency review, and/or are subject to official notice. (See Cal. Code Regs., tit. 23, §§ 5026, 5052.) SJC et al. requests that the Council take notice of Exhibits SJC-1 through SJC-6 as provided for in the Council’s regulations. (Cal. Code Regs., tit. 23, § 5032.) This request pertains to the submittal of each of the following documents:

- Exhibit SJC-1, Santa Clara Valley Water District BDCP study session, part 3: Russell van Loben Sels gives the in-Delta perspective on the BDCP, Maven’s Notebook, November 26, 2013
- Exhibit SJC-2, DWR Bulletin 74-90, June 1994
- Exhibit SJC-3 ENGEO Memorandum, Geotechnical Explorations Sacramento/San Joaquin River Delta: DWR Exploration Abandonment Standards, November 7, 2024
- Exhibit SJC-4 JCCP 4594 Notice of Entry of Order Granting DWR’s Motion for Summary Adjudication (October 2, 2020)
- Exhibit SJC-5 Email from Shelby Spencer re: Early DCP Consultation meeting, September 3, 2024

- Exhibit SJC-6 Email from Daniel Constable re: Important: Delta Conveyance Project and Geotechnical Activities, November 8, 2024

To be considered, the evidence must relate to a generally accepted technical or scientific matter within the Council's jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(A).) The evidence may also relate to facts that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(B).) Alternatively, documents that were part of the record before the certifying agency may properly be supplemented to the record. (Cal. Code Regs., tit. 23, § 5026.)

Exhibit SJC-1: Santa Clara Valley Water District BDCP study session, part 3: Russell van Loben Sels gives the in-Delta perspective on the BDCP, Maven's Notebook (November 26, 2013)

Exhibit SJC-1 is a summary of comments provided at a Bay Delta Conservation Plan workshop providing the perspective of a fourth generation Delta farmer on the effect of conveyance on the Delta as a place. These effects include potential negative impacts on water quality and agricultural land conversion. Because these effects relate to the proposed DCP, a project within the scope of the Delta Plan, they are relevant to the impact of the geotechnical work on the coequal goal of protecting natural and agricultural values of the Delta as an evolving place under Water Code section 85020 subdivision (b). For these reasons Exhibit SJC-1 relates to technical and scientific matters within the Council's jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(A).)

Facts that may be judicially noticed by a court include facts that are not subject to a reasonable dispute and are capable of determination by resort to sources that are reasonably seen as indisputably accurate. (Evid. Code, § 452, subd. (h).) Judicial notice can relate to facts that are easily verified by reference to readily available documents such as employment records. (*People v. Thomas* (1972) 8 Cal.3d 518, 520, fn. 2.) Here, Exhibit SJC-1 summarizes remarks made in a study session for purposes of environmental planning and is readily verifiable. For these reasons, Exhibit SJC-1 meets the standard of the California Evidence Code for permissive judicial notice. (Evid. Code, § 452, subd. (h).) Because the content of Exhibit SCJ-1 meets the test for permissive judicial notice by a court, it satisfies the Council's requirement that the material relates to facts that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(B).)

Exhibit SJC-2: DWR Bulletin 74-90, June 1994

The geotechnical boring sealing methods described in SJC-2 are proposed by DWR itself (see DCP.X2.1.00005, pp. 7, 14), and are part of the record before the certifying agency (Cal. Code Regs., tit. 23, § 5026).

In addition, Exhibit SJC-2 relates to a technical or scientific matter within the Council's jurisdiction because it is a standard for sealing geotechnical borings that is intended to protect groundwater and avoid seepage impacts. The avoidance of seepage impacts is relevant to the potential effects of borings in the Delta. Because much of the landscape covered by the Delta

Plan and proposed for geotechnical borings is protected by levees, it relates to technical matters of land use under the Council's jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(A).)

Those methods can be readily verified by reference to Exhibit SJC-2, and these methods are capable of determination by reference to a document that is not reasonably questioned. For these reasons, Exhibit SCJ-2 meets the general test for permissive judicial notice. (Evid. Code, § 452, subd. (h).) Because Exhibit SJC-2 meets the test for judicial notice, it in turn satisfies the Council's requirement that the material relates to facts that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(B).)

Exhibit SJC-3: Engeo Memorandum, Geotechnical Explorations Sacramento/San Joaquin River Delta: DWR Exploration Abandonment Standards (November 7, 2024)

Exhibit SJC-3, the Engeo Memorandum, relates to a technical or scientific matter within the Council's jurisdiction because it describes the need for careful application of sealing methods for abandoned geotechnical drillings and cone penetration tests ("CPTs") in the Delta region subject to the Council's jurisdiction and planning requirements. Exhibit SCJ-3 describes how heightened oversight and caution is needed to safely implement the standards in DWR Bulletin 74-90 (Exhibit SJC-2) to avoid adverse seepage impacts and even levee failure. Because levee protection is relevant to the landscape subject to the Delta Plan and the Council's jurisdiction, it relates to a technical matter within the Council's jurisdiction. For these reasons it satisfies this element of the Council's standard for notice. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(A).)

Exhibit SCJ-3 was prepared by registered professional geotechnical engineers with specific experience in the Delta based on work for local reclamation districts and other clients. Because the licensing and professional experience of these professionals provides a basis for credibility, the information in Exhibit SJC-3 is not reasonably subject to dispute. Because the information provided in Exhibit SJC-3 provides a means of verifying the facts in those memoranda, and is provided by licensed subject matter experts, it is verifiable by means not reasonably subject to dispute. For these reasons, Exhibit SCJ-3 meets the general test for permissive judicial notice. (Evid. Code § 452, subd. (h).) Exhibit SJC-3 meets the test for permissive judicial notice, it satisfies the standard for notice by the Council requiring that the facts may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(A).)

Exhibit SJC-4: JCCP 4594 Notice of Entry of Order Granting DWR's Motion for Summary Adjudication (October 2, 2020)

Exhibit SJC-4 is a court order that resulted from proceedings between San Joaquin County and DWR regarding the authority of the County to permit well drilling geotechnical activities by DWR. As DWR was a party to the proceeding that resulted in the order contained in Exhibit SJC-4, it is part of the record before the certifying agency (Cal. Code Regs., tit. 23, § 5026). In addition, Exhibit SJC-4 is a "fact that may be judicially noticed by a court" and that also should be noticed by the Council and included in the record. (Cal. Code Regs., tit. 23, § 5032.)

Exhibit SJC-5: Email from Shelby Spencer re: Early DCP Consultation meeting (September 3, 2024)

Exhibit SJC-5 is an email from DWR staff to Council staff regarding “early consultation” meetings on the DCP. As DWR was the sender of the email, it is part of the record before the certifying agency. (Cal. Code Regs., tit. 23, § 5026.) In addition, the Council also received the email, its existence can be readily verified. For these reasons, Exhibit SCJ-5 also meets the general test for permissive judicial notice. (See Evid. Code, § 452, subd. (h); Cal. Code Regs., tit. 23, § 5032.)

Exhibit SJC-6: Email from Daniel Constable re: Important: Delta Conveyance Project and Geotechnical Activities (November 8, 2024)

Exhibit SJC-6 is an email from Council staff attempting to set up separate teams for the geotechnical activities appeals and continued “early consultation” on the consistency of the DCP with the Delta Plan. As the Council was the sender of the email, its existence can be readily verified. For these reasons, Exhibit SCJ-6 meets the general test for permissive judicial notice. (See Evid. Code, § 452, subd. (h); Cal. Code Regs., tit. 23, § 5032.)

5. Objection to DWR’s Continued Closed Meetings and Ex Parte Communications with the Council

So-called “early consultation” on the DCP (and prior project iterations) has been occurring ever since DWR withdrew its Certification of Consistency for the WaterFix Twin Tunnels project in 2018. The SJC et al. parties disagree that closed meetings between DWR and Council staff in the past six years is early consultation and have a standing objection to these activities outside of the public purview. Below is a snip from a document recently received from the Council pursuant to the California Public Records Act² showing the juxtaposition of Council staff meetings with DWR regarding the Geotechnical Activities and the DCP, leading up to the filing of the Certification of Consistency at issue in these appeals:

Date (Y/M/D)	Int/Ext	Certification
7/26/2024	Internal	Geotech
7/26/2024	EXTERNAL	Geotech
7/26/2024	EXTERNAL	DCP
7/31/2024	Internal	Geotech
8/5/2024	EXTERNAL	DCP
8/9/2024	EXTERNAL	Geotech
8/16/2024	EXTERNAL	Geotech
8/22/2024	Internal	DCP
8/23/2024	EXTERNAL	Geotech
9/9/2024	EXTERNAL	DCP

² Page is marked as 24.07.26 PRA 001.

SJC et al. also object to the continued “separate early consultation with Council staff on the Delta Conveyance Project” during the pendency of appeals on the geotechnical activities. (DCP.X2.1.00022; see also Exhibit SJC-6 [council email purporting to create a separate team for continued consultation on the DCP].) While these meetings have always been closed to the public and Delta stakeholders, other members of the public representing DCP proponent agencies are invited and allowed to attend. (See, e.g., Exhibit SJC-5 [invitation includes Jennifer Nevills, Program Manager-Delta Initiatives at Metropolitan Water District].)

The Council is subject to the prohibition against ex parte communications in its regulations for appeals on certifications of consistency. (Cal. Code Regs., tit. 23, § 5024, citing Gov. Code, § 11430.10.) Prohibited ex parte communications include “communication, direct or indirect, regarding any issue in the proceeding, to the [Council, including staff] from an employee or representative of any agency that is a party or from an interested person outside the agency [such as appellants or the respondent], without notice and opportunity for all parties to participate in the communication.” (Council’s November 8, 2024 Notice of Appeals, p. 3, citing and quoting Cal. Code Regs., tit. 23, § 5024, subd. (a).) Because the Council is making a decision on the appeal, it is subject to the general rules of the California Administrative Procedure Act (“APA”). A “decision” to be reached under the APA means “an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.” (Gov. Code, § 11405.50, subd. (a).) The time period during which the prohibition applies is from the date an appeal is filed until the date when the Council issues a final decision. (Cal. Code Regs., tit. 23, § 5024, subd. (b).)

The Council’s work on consistency appeals is delegated in the first instance to staff and executive officers that must compile and review recommendations to the Council. The staff and executive officers preparing recommendations or other written matter for the Council, should be considered functionally equivalent to the Council or “presiding officer” within the meaning of the general prohibition against ex parte communications with the presiding officer under the APA, and the Council regulations (Cal. Code Regs., tit. 23, § 5024; Gov. Code, § 11430.10, subd. (a).) For a complex matter such as a consistency certification appeal, with thousands of pages of affiliated records, Council staff and executive officers review and recommend actions on appeal to the Council itself, and thus are functionally part of the decision making body. (Accord Council’s Notice of Appeals, p. 3.)

Notwithstanding these facts, the Council has explicitly directed staff to continue “early consultation” on the consistency certification for the DCP, of which the geotechnical activities are a part, under the theory it is a separate “covered action” within the meaning of the Delta Reform Act. (See Exhibit SJC-6, E-mail from Daniel Constable [November 8, 2024].) The same email message purports to create a firewall between staff that will work on the appeal for 2024-2026 geotechnical activities and the staff that will continue “early consultation” on the DCP. Notably, only one member of the Council’s executive team (among 11 total)³ is named as part of the two teams subject to the “firewall.” What this effectively means is that executive staff, and other staff that are not subject to the firewall can continue to discuss the covered action that is

³ See <https://deltacouncil.ca.gov/executive-team>.

subject to appeal (the DCP, of which geotechnical work is a part), during the period when ex parte communications are prohibited (while the appeal is pending). (See, e.g., Exhibit SJC-5 [meeting invitation email includes Jeff Henderson, Council Deputy Executive Officer for Planning & Performance in DPC “early consultation].)

As described above, the scope of the covered action in a consistency certification and an appeal thereof is the same as the definition of a project under CEQA. (Wat. Code § 85057.5, citing Pub. Resources Code § 21065.) The regulations implementing CEQA state that the “project,” means “the whole of an action.” (Cal. Code Regs., tit. 14, § 15378, subd. (a).) Under this definition, the whole of the action thus means the entirety of the DCP, including the geotechnical work that has no utility or purpose other than advancing the DCP. (See DCP.X2.1.00020 [DWR statement that collecting information through the geotechnical investigations will inform a future consistency certification of the Delta Tunnel, p. 1-2, fn. 4].) Thus, Council executive staff that supervise, and staff that participate in, “early consultation” regarding the DCP, while the appeal on geotechnical work is pending, are engaging in prohibited communications. (See DCP.X2.1.00003, pp. 4, 11 [concluding that the geotechnical activities are part of one “covered action”]; see also DCP.X2.1.00020 2024, pp. 1-1, 1-2 [explaining relationship of geotechnical activities to Delta Conveyance Project].)

The continuing ex parte communications between staff and executive officers regarding the covered action subject to appeal, with the agency defending the appeal (DWR) thus violates the prohibition on ex parte communications. (Cal. Code Regs., tit. 23, § 5024, citing Gov. Code, § 11430.10; see also Council’s November 8, 2024 Notice of Appeals, p. 3.) Ongoing DWR communications with the Council’s executive team and staff allow a party to the appeal (here DWR), to impermissibly influence the appeal, and engage in communications that are not transparent and transmitted to all parties. The exclusion of the interested public from these ongoing meetings is especially inappropriate and unfair since other outside entities (such as MWD) are invited and allowed to attend. (See Exhibit SJC-5.) To the extent these concurrent meetings continue to occur, they should be made open to the public and all related communications must be made part of the record for the geotechnical activities appeals and available to all parties. (See Gov. Code, § 11430.50.) The continuation of meetings with DWR and DPC proponents also impairs the ability of the Council to provide a fair and impartial hearing to appellants, which could lead to invalidation of the Council’s decision on the appeals. (See, e.g., *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483; see also Exhibit SJC-6, p. 1.)

Conclusion

The entire Delta Tunnel project must be reviewed for consistency with the Delta Plan in one certification of consistency. To do otherwise would create a dangerous precedent that would allow covered actions to be segmented into parts, thereby failing to consider the effect of the entire project on the Coequal Goals and the Delta Plan. Moreover, even if reviewed separately, the Geotechnical Activities are inconsistent with the Council’s adopted regulatory policies, including but not limited to those applicable to the Coequal Goals and Mitigation Measures (G P1) and Respecting Local Land Use (DP P2). Please see Appeal filed on November 7, 2024, for

2024-2026 Proposed Geotechnical Activities
Consistency Appeal (Cert. ID: C20242)
Written Submission

additional details regarding the inconsistency of the Geotechnical Activities with the Council's regulatory policies and other applicable requirements.

SJC et al. respectfully request that its Appeal be granted, and the action remanded to DWR so that the Council can ensure proper consistency review of the entire Delta Tunnel project.

Respectfully submitted,

SOLURI MESERVE

A Law Corporation

By: 

Osha R. Meserve
Primary Contact for Appellants
County of San Joaquin,
Central Delta Water Agency, and
Local Agencies of the North Delta

Attachments: Exhibits SJC-4 through SJC-6

cc: Service List for Geo Technical Project Certification of Consistency Appeal

LIST OF EXHIBITS SUBMITTED IN SUPPORT OF APPEAL

(Exhibits SJC-1, SJC-2, and SJC-3 were submitted with the SJC et al. appeal on November 7, 2024. Exhibits SJC-4 through SJC-6 are attached to this Supplemental Brief.)

Exhibit ID	Description
Exhibit SJC-1	Santa Clara Valley Water District BDCP Study Session, part 3: Russell van Loben Sels gives the in-Delta perspective on the BDCP, Maven's Notebook (November 26, 2013)
Exhibit SJC-2	DWR Bulletin 74-90, June 1994
Exhibit SJC-3	ENGEO Memorandum, Geotechnical Explorations Sacramento/San Joaquin River Delta: DWR Exploration Abandonment Standards (November 7, 2024)
Exhibit SJC-4	JCCP 4594 Notice of Entry of Order Granting DWR's Motion for Summary Adjudication (October 2, 2020)
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Exhibit SJC-6	Email from Daniel Constable re: Important: Delta Conveyance Project and Geotechnical Activities (November 8, 2024)

EXHIBIT
SJC-4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN JOAQUIN

Coordination Proceeding
Special Title (Rule 3.550)

*Exempt from filing fees per Government Code
section 6103*

DEPARTMENT OF WATER
RESOURCES CASES

Case No. JCCP 4594

*County of San Joaquin v. California
Department of Water Resources*

NOTICE OF ENTRY OF ORDERS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on October 2, 2020, the court signed an order granting the motion for summary adjudication of defendant State of California, by and through the Department of Water Resources. The order is attached hereto as Exhibit A. The court also signed an order ruling on the parties' various evidentiary objections and requests for judicial notice. This order is attached hereto as Exhibit B.

Dated: October 7, 2020

Respectfully Submitted,

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BRUCE D. MCGAGIN
Supervising Deputy Attorney General

/s/ *Christine E. Garske*
CHRISTINE E. GARSKE
Deputy Attorney General
*Attorneys for the State of California, by and
through Department of Water Resources*

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EXHIBIT A

BRANDON E. RILEY, CLERK

By Allison Little

DEPUTY

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title:	COORDINATED ACTION: JCCP 4594
IN RE: DEPARTMENT OF WATER RESOURCES CASES	OPINION AND ORDER GRANTING DWR'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES
JCCP 4594	HEARING DATE: October 2, 2020
<i>County of San Joaquin v. DWR</i>	Time: 10:00 a.m. (telephonic)
	Dept.: 10B
	Hon. John P. Farrell

Background: This coordinated proceeding arose under Code of Civil Procedure Section 1245.010 *et seq.* authorizing Department of Water Resources ("DWR"), as a " . . . person authorized to acquire property . . . by eminent domain to enter upon the property . . . " to undertake tests and activities "reasonably related to acquisition or use of the property for that use." After a long process of hearings, the trial court on February 22, 2011 issued an order granting entry for environmental studies and later after more hearings on April 8, 2011 denied the requested order for geological studies as a "taking" outside the perceived scope of the chapter in question.

The case went on appeal with published opinions by the Court of Appeal and the Supreme Court. *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151. Upon remand in February 2017, this court conducted further hearings and on June 16, 2017 issued an "Order Permitting Entry and Investigation of Real Property for Geological and Drilling Purposes" which has been amended several times thereafter (the "Entry Order"). The Entry Order was made pursuant to the directions of the Supreme Court and the Court of Appeals to approve entry by DWR onto certain private properties in the County of San Joaquin and several other Delta counties for the purpose of drilling and testing to determine the appropriateness of the properties for locating large water pipes as part of a statewide water conveyance system. This order constituted a form of

eminent domain by which the state takes a property interest for a temporary purpose in order to determine whether it should acquire the property for the purpose in question.

DWR commenced drilling on one parcel in San Joaquin County through its contractor. The County of San Joaquin issued a “stop order” to DWR and its contractors to prevent such drilling until DWR obtained a permit to so drill and test under a County ordinance. The issue presented is whether the County of San Joaquin can lawfully require the State of California to obtain a County permit and to follow County ordinance regulations in doing the particular geological tests authorized by the Entry Order. This court rules that the County of San Joaquin may not require the State of California to obtain a County permit or to obey County ordinances in order to perform the drilling and boring in question. The Court accordingly GRANTS DWR’s Motion for Summary Adjudication of the First Cause of Action to Enforce San Joaquin County’s Well Permit Requirement in San Joaquin County’s First Amended Complaint.

ANALYSIS

No Triable Issue of Material Fact. San Joaquin County filed a First Amended Complaint for Injunctive Relief, Declaratory Relief and Petition for Writ of Mandate (“First Amended Complaint” or “FAC”) against DWR. The First Cause of Action within the First Amended Complaint seeks to require DWR to comply with the County’s Water Well and Well Drilling Regulations (“Well Ordinance”), found at Chapter 9-1115 of the County’s Development Code and to obtain a county permit to do the geological borings authorized under the Entry Order.

DWR filed the subject motion for summary adjudication of this first cause of action on the ground that sovereign immunity bars it – San Joaquin County, a subdivision of the State of California, cannot require the State to comply with its local permitting requirements. County responds that an express waiver of sovereign immunity under Water Code sections 13050(c) and 13755 permits San Joaquin County to enforce its Well Ordinance against DWR with respect to borings authorized under the Entry Order.

The court finds that there is no triable issue of material fact. Essentially, all the documents are official filings. There is no dispute as to the documents and they are undisputed except as to meaning and effect. The “dispute” is whether DWR will drill a type of well covered by the legislative waiver of sovereign immunity. But that turns on the meaning of legislative words – statutory language – not disputed facts or clashing expert opinions.

Pursuant to this court’s Entry Order, DWR had begun to drill on one of the properties located in the County of San Joaquin through a C-57 licensed contractor. Such contractor was then served with a stop order by the County for failure to have obtained a County permit for the work in question.

Jurisdiction of this Court. The Entry Order does not specifically provide for its enforcement. But an entry order, like any court order, can be enforced by the court issuing it. *Code Civ. Proc. § 128(a)(4)*. The Order of Entry states in Paragraph 7 that: “All persons having notice of this Order shall refrain from interfering with the entry and activities permitted above.” This would be typical of all such entry orders which are interim orders with the court retaining jurisdiction to enforce or modify the provisions of the order and to provide compensation if appropriate at the end of the entry. The issue then is whether the interference with the activities in this case are lawful. This could have been presented by way of OSC re Contempt against the County but the County filed first to seek an injunction against DWR. *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, does not involve an entry order and merely states that there may in some circumstances be another enforcement mechanism. No such enforcement mechanism exists here to displace the authority granted under CCP §1245.010, et seq. and §128(a)(4).

General County and State Authority. A county is a “...legal subdivision of the State...” *Cal. Const. Art. XI § 1(a)*. The State Legislature “shall provide for county powers...” *Cal. Const. Art. XI § 1(b)*. A County charter can be adopted which constitutes “...the law of the State and have the force and effect of legislative enactments.” *Cal. Const. Art. XI § 3*. San Joaquin County is a ‘general law’ county and

does not have a county charter. Unlike charter cities, counties do not enjoy the grant of broad police power over municipal affairs.

“[T]he Constitution contains no provision giving charter counties supreme authority over ‘county affairs...’”

City and County of San Francisco v. Regents of University of California (2019) 7 Cal. 5th 536 at 542 fn. 2 (hereinafter “*San Francisco v. Regents*”).

Article X, section 5 of the state Constitution and the Water Code clearly put the State in charge of the water resources of the State in order to put them to beneficial use to the fullest extent of which they are capable. *Water C. § 100*. All “water within the State is the property of the people of the State...” *Water C. § 102*; see also *§ 104*.

The Limited Waiver of Immunity. In general throughout the Water Code, the term “person” does not include the State. See *Water C. §§ 18 and 19*. However, in Chapter 10 (Sections 13700 through 13806), the definition of “person” includes the state. *Water C. § 13050(c)*. Section 13755 provides in relevant part that: “every person shall comply with this chapter and any regulation adopted pursuant thereto, in addition to standards adopted by any city or county.” The County, in effect, argues that its authority to have stronger **standards**, allows it to expand **the scope** of the waiver of sovereign immunity in this section. Such is not the case.

The Water Code provides that:

“no person shall undertake **to dig, bore or drill a water well**, cathodic protection well, groundwater monitoring well, or geothermal heat exchange well...unless the person responsible...possesses a C-57 Water Well Contractor's License.”

Id., § 13750.5.

Section 13700 reiterates the same limited areas of concern for the chapter as follows:

The Legislature finds that the greater portion of the water used in this state is obtained from underground sources and that those waters are subject to impairment in quality and purity, causing detriment to the health, safety and welfare of the people of the state. The Legislature therefore declares that the people of the state have a primary interest in the location, construction, maintenance, abandonment, and destruction of **water wells, cathodic protection wells, groundwater monitoring wells, and geothermal heat**

exchange wells, which activities directly affect the quality and purity of underground waters."

(Emphasis added).

Section 13710 also defines "Water Well" as follows:

"...any artificial excavation constructed by any method for the purpose of extracting water from, or injecting water into, the underground. ..."

(Emphasis added).

Likewise, Water Code section 13712 defines a monitoring excavation **"for the purpose of monitoring fluctuations in groundwater levels, quality of underground waters, or the concentration of contaminants** of underground waters." To support its claim of a disputed issue of fact, San Joaquin's Additional Material Fact No. 35 states: "The [Mitigated Negative Declaration ("MND")] states that 'select geotechnical drill holes may be completed as groundwater monitoring wells.'" But the MND covers vast stretches of land in six counties and gives no support that any such well would be placed on the properties in question in San Joaquin County. Indeed, it instead tends to show that most geotechnical drill holes would not be groundwater monitoring wells.

In both of these instances, the County argues that intent is irrelevant and that simply interacting with groundwater or recording the findings of a CPT or geotechnical drilling is sufficient to support a finding that a CPT or drill hole falls within the County's purview.

The County argues:

"DWR's intent when it conducts soil borings and CPTs is irrelevant to the question of whether DWR's activities will, in fact, monitor or extract groundwater."
Opposition Memo, 8:15-16.

The drillings authorized by the Court's Entry Order in this case are not "for the purpose of extracting water from, or injecting water into, the underground" or for any of the other purposes listed in Sections 13710. Likewise, they are not for the water monitoring purpose of Section 13712. DWR has attested so, and there is no evidence to the contrary. Any incidental capture of water while removing a core sample or

recording CPT or geotechnical data is irrelevant or else “for the purpose of” would be rendered of no effect.

The County of San Joaquin relies on a county ordinance to expand regulation to include test drilling of the kind in question that is not for the purpose of extracting or injecting water into the underground. Water Code §13801(c) states that “each county ... shall adopt a water well, cathodic protection well and monitoring ... ordinance with standards no less stringent than those contained in DWR Bulletin 74-81.” (Emphasis added.) “Every person shall comply with this chapter ... in addition to standards adopted by any city or county” Water Code § 13755. San Joaquin County’s Well Standards are said to include some requirements that pertain to the state, but the County has not cited in its opposition any particular provisions of the Well Ordinance. Likewise, the declarations do not cite particular provisions that include the state.

Nevertheless, we address the question of whether the County may lawfully regulate the State in this manner.

Waivers Strictly Construed: The general rule is that the County may not regulate the State under the doctrine of sovereign immunity *unless the Legislature has expressly waived immunity in express words of a statute.*

“Because the ‘state’s immunity from local regulations is merely an extension of the concept of sovereign immunity’ [citation] the consent to waive the immunity must be stated in ‘express words’ [citation] in a statute [citation].”

Del Norte Disposal, Inc. v. Department of Corrections (1994) 26 Cal.App. 4th 1009, 1013.

The first issue is whether the County may by ordinance *expand the scope or subject matter* over which the State by Water Code sections 13050 and 13755 has waived its sovereign immunity. This is not simply a county ordinance fleshing out authority granted by statute. Instead it changes and defeats the limited definition of “water well” to eliminate the restriction of “...for the purpose of extracting water from, or injecting water into, the underground...” and broadens **not the standards but the scope** of the waiver to include test borings. *Water C. § 13750.5.*

Waivers of state immunity are not liberally construed. A waiver must be *explicit in a statute*. *Del Norte Disposal, Inc., ibid.* This is especially true in the instant case involving the basic governmental authority to "...enter upon property to make photographs, studies, surveys, examination, tests, soundings, borings....reasonably related to the acquisition or use of property..." *Cal. Code Civ. Proc. § 1245.010*. Borings and drillings are a necessary part of any planning for or construction of reservoirs, dams, and other major public works. To include such in what would otherwise be a limited area of local water well regulation would be a giant leap. We would not read a limited statute to authorize county intrusion into a fundamental sovereign power of the State.

The analysis does not change because a State Board recommended a model ordinance pursuant to Water Code section 13801(b) which adds "observation well, monitoring well or any other excavation that may intersect ground water" to the list of matters for which a county permit may be required.¹ The question of the State Board's authority to expand the matters for which a private person or entities other than the State would be required to get a County permit is not before this court. A State Board's recommendation of a model county ordinance does not substitute for the requirement that a waiver of sovereignty as to the State can only be by the express words of a statute. When the words used in a statute are clear and unambiguous (as they are in the provisions allowing county regulation of water wells) there is no further investigation or interpretation to undertake. *MacIlsac v. Waste Management (2005) 134 Cal.App.4th 1076, 1082-83; see also California Groundwater Ass'n v. Semitropic Water Storage District (2009) 178 Cal.App. 4th 1460, 1469.*

The County also relies on the Sustainable Groundwater Management Act ("SGMA") (Water Code §§ 10720 *et seq.*) as some support for its claim that the state

¹ Water Code section 13801 required a county to adopt, by January 15, 1990, a well drilling and abandonment ordinance meeting or exceeding the standards set forth in DWR's Bulletin 74-81, based on a report provided by DWR to the county's Regional Water Quality Control Board. Section 13803 requires any such adopted county ordinance to be transmitted to DWR for its review and comments.

has waived sovereign immunity with respect apparently to any act that intersects the water table. But no express waiver of sovereign immunity by the state is identified anywhere in SGMA and no section is even suggested for such. The expansion of county powers would thus normally be read to apply to non-state actors. The borings in question and CPT do not even appear to be necessarily covered. In fact, under SGMA, a person “who extracts for domestic purposes, two acre feet or less of groundwater per year” is a “*de minimis* extractor.” *Water Code* §§ 10721(a).

The fact that CalTrans may have chosen to seek permits rather than perhaps delay state road construction in San Joaquin County in order to contest the County permit ordinance tells us nothing about the lawfulness of the permit requirement as to the DWR project in question. It may to a minimal extent evidence that in some circumstances the permit process is not overly time-consuming.

Another issue is that the application of the county ordinance as it pertains to the State in this case cannot be justified under some claim of authority as a “county affair”. Indeed the County is not currently arguing such. As noted earlier, San Joaquin County does not possess the broader police power of a charter city. In the case of San Francisco, which has the combined powers of a charter city and county, the Court upheld an ordinance requiring a state parking lot which charged for parking to collect a city tax imposed on the person parking. The Court viewed the tax as a core “municipal affair” and the collection as “unobtrusive” “one that does no more than require assistance in collecting a concededly valid tax on third parties.” *San Francisco v. Regents, supra*, 7 Cal. 5th at 553.

The Court in *San Francisco v. Regents* reviewed approvingly two cases, one of which held that an ordinance requiring plumber certification could not apply to a state employee doing work for the State (*In re Means* (1939) 14 Cal.2d 254) and another holding that a school district organized under State laws was exempt from building regulations of a non-chartered city. (*Hall v. City of Taft* (1956) 47 Cal.2d 177.) The Supreme Court in *San Francisco v. Regents* reasoned:

“This line of cases ... concern substantive requirements that interfered with the state’s substantive judgments about how to perform its assigned functions.

Means and Hall tell us that in the event of a conflict between a municipality's view of, say, how best to build a parking lot, and the state's ability to decide for itself what sort of parking lot would best serve its needs, the state's prerogatives must prevail."

San Francisco v. Regents, supra, 7 Cal. 5th 536, at 553.

In this case, the County wishes to supervise and direct how and perhaps where the State can perform tests for a statewide project. This is clear interference with the State's substantive judgments on the state's water resources.

The "Unregulated Perils". County seems to argue that if DWR is not regulated by the County all sorts of bad things may happen to the water resources of the State, though none are actually identified. However, the general rule is that counties cannot impose regulations on the state. In *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal. App. 3d 997 the court held that the defendant rapid transit district was a state entity and did not have to comply with general plans of a city or county adopted pursuant to specific statutory authority. *Gov. Code §§ 65300 and 65700.*

Similarly, the code and the cases make clear that the state and its entities are not bound by county or city building codes or zoning ordinances. Government Code section 53090, *et seq.* addresses the application of city and county ordinances to 'local agencies' defined as "an agency of the state for the local performance of governmental or proprietary function within limited boundaries." The state is specifically excluded from the definition of "local agency," as are cities, counties and publicly-established and managed rapid transit districts. *Gov. C. §§ 53090(a).*

City of Lafayette v. East Bay Mun. Utility Dist. (1993) 16 Cal.App.4th 1005, 1013-1014 reads section 53091(d)'s prohibition on the application of county building ordinances to the construction of water transmission facilities as an "absolute exemption" based on the Legislature's intent to "strike a balance between the value of local zoning control by cities and counties and the state interest in efficient storage and transmission of water. [Citations.]" *Ibid.*

DWR is vested with the authority to plan and construct water transmission facilities for the benefit of the entire state and its people. Water transmission facilities are specifically exempted from municipal building ordinances, and DWR's intent is not to drill water wells but to plan, design and construct a water conveyance system, therefore, San Joaquin's Well Standards cannot be enforced against the particular activities authorized under the Entry Order as part of DWR's water transmission project.

There is no reason to liberally construe a limited waiver of immunity as to specific enumerated topics such as a water well in order to avoid the supposed evils of an unregulated DWR drilling.

CEQA Filings v. Entry Order. The court's Entry Order governs the actual geologic activities on the parcels in question. The Project IS/MND was adopted prior to the hearings and the resulting Entry Order. While DWR may choose to do less than it was authorized by the Entry Order, it cannot do more than authorized by the Entry Order regardless of what may be in the IS/MND. There is no evidence that DWR intends to exceed the provisions of the Entry Order and indeed, DWR has sworn it will not do so. The IS/MND raises no triable material fact.

Entry Order Did Not Rule on Issue of County Permit. The Court agrees that its Entry Order did not address whether DWR was obligated to comply with county permitting requirements. The issue was not raised at the time of the Entry Order and therefore the lawfulness of any alleged county requirement that the State obtain a County drilling permit was not ruled on at that time.

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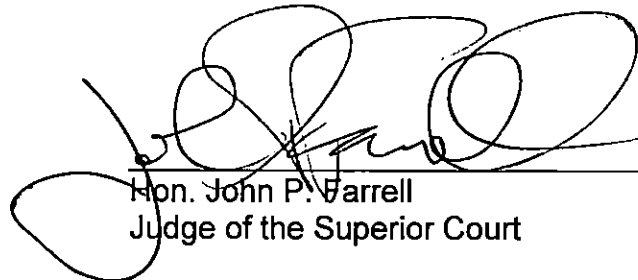
///

Order Limited to State. In reaching the conclusions in this Order, this court addresses only the rights and powers of the State of California. It does not consider or rule on the validity of the County's ordinance as to private parties or entities other than the State.

Therefore, the court **HEREBY ORDERS** as follows:

1. The Motion for Summary Adjudication of Issues filed by DWR is granted for the reasons stated above, including that the court finds no triable issue of material fact as set out in DWR's Statement of Undisputed Facts.
2. County has dismissed its second and third causes of action in the operative First Amended Complaint;
3. This renders DWR's Motion for Summary Adjudication dispositive;
4. DWR is to submit a proposed Judgment, per court rules.

Dated: October 2, 2020



Hon. John P. Farrell
Judge of the Superior Court

EXHIBIT B

SUPERIOR COURT, STATE OF CALIFORNIA

DEPUTY

COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title: IN RE: DEPARTMENT OF WATER RESOURCES CASES JCCP 4594 <i>County of San Joaquin v. DWR</i>	COORDINATED ACTION: JCCP 4594 ORDER ON EVIDENTIARY OBJECTIONS AND REQUESTS FOR JUDICIAL NOTICE RE: DWR's MOTION FOR SUMMARY ADJUDICATION HEARING DATE: October 2, 2020 Time: 10:00 a.m. Dept.: 8D Hon. John P. Farrell
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RULINGS ON EVIDENCE

DWR's Requests for Judicial Notice within the Garske Declaration:

Requests 1 through 5, 8 – 11, 13. Granted. *Evid. C. § 452(d)(1)*
Request 6 – Granted. *Evid. C. § 452(h)*
Request 7—Denied. Complaint superceded by First Amended Complaint.

County of San Joaquin's Objections to DWR's Evidence

Overruled. Rules of Court Rule 3.1345. Also, Davis' statement of intent is part of the *res gestae*.

DWR's Objections to San Joaquin's Evidence

Objections to the Meserve Declaration

1. Overruled.
2. Different MND attached to court's copy.
3. through 5. Sustained
6. a. through s. Sustained as to each.
7. Overruled
8. Overruled
9. Sustained

Objections to the Zidar Declaration

- 10 – Sustained as to paragraph 7,

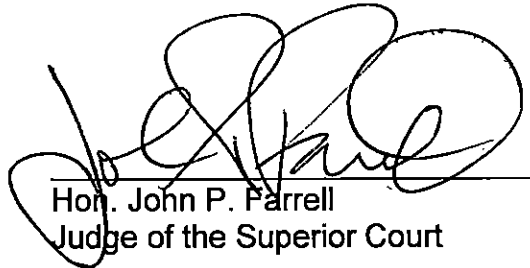
- 11 – Sustained
- 12 – Sustained as to last sentence only.
- 13 – Overruled as to first sentence, otherwise sustained.

Objections to the Neudeck Declaration

- 14 – Sustained, irrelevant as to paragraph 7
- 15 – Overruled
- 16 – Sustained
- 17 – Overruled
- 18 – Overruled
- 19 – Overruled, except as to “are used to”
- 20 – Overruled
- 21 – Sustained
- 22 – Sustained
- 23 – Sustained
- 24 – Overruled
- 25 -- Sustained
- 26 – Sustained – Document speaks for itself
- 27 -- Sustained
- 28 – Sustained
- 29 – Sustained
- 30 – Sustained

IT IS SO ORDERED.

Dated: October 2, 2020



Hon. John P. Farrell
Judge of the Superior Court

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 2 BRUCE D. MCGAGIN
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Attorneys for State of California, by and through
 8 *the Department of Water Resources*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN JOAQUIN

11
 12 Coordination Proceeding Special Title
 13 (Rule 3.550)

CASE NO.: JCCP 4594

DECLARATION OF SERVICE

14
 15 DEPARTMENT OF WATER
 16 RESOURCES CASES

17 *County of Sacramento v. California*
Department of Water Resources

18 I declare:

19 I am employed in the Office of the Attorney General, which is the office of a member of
 20 the California State Bar, at which member's direction this service is made. I am 18 years of age
 21 or older and not a party to this matter. I am familiar with the business practice at the Office of the
 22 Attorney General for collection and processing of correspondence for mailing with the United
 23 States Postal Service. In accordance with that practice, correspondence placed in the internal
 24 mail collection system at the Office of the Attorney General is deposited with the **United States**
 25 **Postal Service** with postage thereon fully prepaid that same day in the ordinary course of
 26 business.

27 On October 7, 2020, I served the attached:
 28

1 **NOTICE OF ENTRY OF ORDERS**

2 by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system
 3 at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento,
 4 CA 94244-2550, addressed as follows:

5 Gerald Houlihan, Esq.
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 6 848 The Alameda
 San Jose, CA 95126
 7 Gerry@matteoni.com

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 Kirton & McConkie
 9 1800 Eagle Gate Tower
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 10 Salt Lake City, Utah 84145-0120
 11 chill@kmclaw.com

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1 I declare under penalty of perjury under the laws of the State of California, the foregoing is
2 true and correct and that this declaration was executed on **October 7, 2020**, at Sacramento,
3 California.

4
5
6 /s/ Crissy Rojas
Crissy Rojas

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EXHIBIT
SJC-5

From: [Spencer, Shelbie@DWR \(she/her\)](mailto:Spencer,Shelbie@DWR)
To: [Block, Connor H.@DWR](mailto:Block,Connor.H.@DWR); [Marquez, Katherine@DWR \(she/her\)](mailto:Marquez,Katherine@DWR); [Buckman, Carolyn@DWR](mailto:Buckman,Carolyn@DWR); [Nevills, Jennifer@MWD](mailto:Nevills,Jennifer@MWD); [Constable, Daniel@DeltaCouncil](mailto:Constable,Daniel@DeltaCouncil); [Henderson, Jeff@DeltaCouncil](mailto:Henderson,Jeff@DeltaCouncil)
Cc: [Odaiyappan, Meenatchi@DeltaCouncil](mailto:Odaiyappan,Meenatchi@DeltaCouncil); [Thomson, Megan@DeltaCouncil](mailto:Thomson,Megan@DeltaCouncil); [Kelly, Patricia@DeltaCouncil](mailto:Kelly,Patricia@DeltaCouncil); [Bathulla, Ashok@DeltaCouncil](mailto:Bathulla,Ashok@DeltaCouncil)
Subject: RE: Delta Conveyance- Early Consultation Series
Date: Tuesday, September 3, 2024 3:39:16 PM
Attachments: [Draft Agenda Early Consultation 9.9.2024.pdf](#)

Hello everyone,

Attached is the draft agenda for next week's Early Consultation meeting. Let me know if there are any proposed edits.

Thanks,

Shelbie Spencer

Department of Water Resources

Cell: (279)-599-6025

-----Original Appointment-----

From: Spencer, Shelbie@DWR

Sent: Monday, February 6, 2023 3:47 PM

To: Spencer, Shelbie@DWR; Block, Connor H.@DWR; Marquez, Katherine@DWR; Buckman, Carolyn@DWR; Nevills, Jennifer@MWD; Constable, Daniel@DeltaCouncil; Henderson, Jeff@DeltaCouncil

Cc: Odaiyappan, Meenatchi@DeltaCouncil; Thomson, Megan@DeltaCouncil; Kelly, Patricia@DeltaCouncil; Bathulla, Ashok@DeltaCouncil

Subject: Delta Conveyance- Early Consultation Series

When: Monday, September 9, 2024 2:30 PM-4:00 PM (UTC-08:00) Pacific Time (US & Canada).

Where: Microsoft Teams Meeting

Hi All,

Moving this meeting to a new time to avoid the holiday.

Thanks,

-Shelbie Spencer

Microsoft Teams meeting



[REDACTED]

[REDACTED]

[REDACTED]

Welcome to the California Natural Resources Agency and affiliated organizations online meeting system. Enjoy your meeting.

[Learn More](#) | [Meeting options](#)

DELTA CONVEYANCE PROJECT

EARLY CONSULTATION – COEQUAL GOALS DISCUSSION

Toll number: +1 [REDACTED]

Time: 2:30pm – 4:00pm

AGENDA FOR MONDAY, SEPTEMBER 9TH, 2024

1. DCP Program Update
2. DSC Update
3. Coequal Goals Discussion
4. ER P3, ER P4, RR P3, and WR P2 Follow-Up
5. Parking Lot Items
6. Next Meeting
 - a. **October 7th, 2024**

EXHIBIT
SJC-6

From: [Constable, Daniel@DeltaCouncil](mailto:Constable.Daniel@DeltaCouncil)
To: [Constable, Daniel@DeltaCouncil](mailto:Constable.Daniel@DeltaCouncil); [Navarro, Scott@DeltaCouncil](mailto:Navarro.Scott@DeltaCouncil); [Kelly, Patricia@DeltaCouncil](mailto:Kelly.Patricia@DeltaCouncil); [Thomson, Megan@DeltaCouncil](mailto:Thomson.Megan@DeltaCouncil); [Kwan, Christopher@DeltaCouncil](mailto:Kwan.Christopher@DeltaCouncil); [Bathulla, Ashok@DeltaCouncil](mailto:Bathulla.Ashok@DeltaCouncil); [Hastings, Lauren@DeltaCouncil](mailto:Hastings.Lauren@DeltaCouncil); [Klopfenstein, Rachael@DeltaCouncil](mailto:Klopfenstein.Rachael@DeltaCouncil); [Chapple, Dylan@DeltaCouncil](mailto:Chapple.Dylan@DeltaCouncil); [Tilcock, Miranda@DeltaCouncil](mailto:Tilcock.Miranda@DeltaCouncil); [Brusati, Elizabeth@DeltaCouncil](mailto:Brusati.Elizabeth@DeltaCouncil); [Elser, Stephen@DeltaCouncil](mailto:Elser.Stephen@DeltaCouncil); [Zemenick, Ash@DeltaCouncil](mailto:Zemenick.Ash@DeltaCouncil)
Subject: Important: Delta Conveyance Project and Geotechnical Activities
Date: Tuesday, October 8, 2024 11:47:30 AM
Attachments: [image001.png](#)

Hello All,

You are receiving this email because you are part of the early consultation team for the Delta Conveyance Project. Some of you have also been involved in early consultation related to the Geotechnical Activities (Geotech) certification of consistency (certification) being developed by the Department of Water Resources (DWR).

DWR posted a draft certification for Geotech on their website on Friday, September 27 and we anticipate that they will submit a certification soon. **Early consultation concerning Geotech has concluded. Please do not engage in further communication or work related to Geotech.** However, at the same time, **early consultation may be proceeding for the Delta Conveyance Project.**

Our appeals procedures prohibit ex parte communications once an appeal is filed and until the Council issues a final decision on the appeal. (Cal. Code Regs., tit. 23, § 5024.) This includes any communication, direct or indirect, from an interested person regarding any issue in the proceeding without notice and an opportunity for all parties to participate in the communication. This allows the Council to provide a fair and impartial hearing to parties to an appeal.

Given your role in early consultation:

1. **Please do not discuss, communicate, or share information related to the Delta Conveyance Project with persons that are not part of the early consultation team (see list of early consultation team below) or part of early consultation meetings:**

-

Early consultation team:

1. Dan Constable
2. Scott Navarro
3. Pat Kelly
4. Megan Thomson

5. Chris Kwan
6. Ashok Bathulla
7. Lauren Hastings
8. Rachael Klopfenstein
9. Dylan Chapple
10. Miranda Tilcock
11. Elizabeth Brusati
12. Stephen Elser
13. Ash Zemenick

2. Please do not communicate or share information concerning Geotech or the Delta Conveyance Project with the appeals hearing team:

Appeals hearing team:

Presiding Officer: Julie Lee

1. Eva Bush
2. Hannah Chaney
3. Bree Montague
4. Annika Ragsdale
5. Dylan Stern
6. Xoco Shinbrot
7. Lisamarie Windham-Myers
8. Erin Mullin
9. Kim Luke

Maintaining a firewall between you and Council staff working on the appeal of the Geotech certification is very important. This allows our early consultation team to continue to offer early consultation to DWR's overall Delta Conveyance Project. If you are contacted by persons that are not on the Early Consultation Team regarding Geotech or the Delta Conveyance Project, or it comes up in conversation, please politely decline to discuss and remove yourself from the conversation.

Lastly, I also would ask you to not post on social media regarding either Geotech or the Delta Conveyance Project to protect the integrity of the Council's quasi-judicial process.

Please reach out to me or the Council legal team if you have any questions.

Thank you,

Dan



Daniel Constable (He/Him/His)
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