

**DWR 2024-2026 Proposed Geotechnical Activities for Delta Tunnel**  
**Consistency Appeal (Cert. ID: C20242)**  
November 7, 2024

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**Introduction**

The Delta Plan Programmatic EIR (“PEIR”) includes extensive mitigation measures that apply to covered actions through G P1(b)(2) (Cal. Code Regs., tit. 23, § 5002). These mitigation measures are meant to ensure covered actions conform to the Coequal Goals and the Delta Plan. DWR, rather than abide by the Delta Plan PEIR mitigation measures, has failed to integrate these necessary protections into the geotechnical activities.

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

DWR claims that the project does not need to be consistent with G P1(b)(2) in its Certificate of Consistency. (See Certificate, pdf, p. 2; see also DCP.X2.1.00020, pp. 4-19 to 4-21.) Despite the assertion that it does not need to be consistent with G P1(b)(2), DWR provides some narrative for each elements of G P1(b)(2). (DCP.X2.1.00020, pp. 4-22 to 4-68.) However, each narrative finding states that there are no impacts. The findings cite the use of various applicant-developed mitigation measures that are asserted to fully mitigate project impacts. That narrative does not compare how or why those specified substitute measures are equally or more effective than the mitigation measures contained in Delta Plan PEIR Appendix O. Moreover, it does not appear that PEIR Appendix O was even included as a reference document with DWR’s Consistency Certification.<sup>1</sup>

Rather than actually show that the project’s mitigation measures are as effective or equivalent to the measures in Delta Plan PEIR Appendix O, DWR relies on blanket statements regarding the adequacy of its EIR mitigation measures, failing to demonstrate compliance with G P1(b)(2). DWR’s discussion in the “Delta Plan Mitigation Measure Comparison” section of the Certification fails to include a cross-reference table that clearly shows how applicable mitigation measures in the Delta Plan PEIR are being implemented, or how specified substitute measures are equally or more effective.

DWR’s Environmental Compliance, Clearance, and Monitoring Plan is also incomplete and fails to support DWR’s findings regarding G P1(b)(2).

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<sup>1</sup> Available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

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(DCP.X2.1.00020, Attachment 5.) The list of mitigation measures and other requirements provided apparently includes measures that DWR has no intention of implementing during the geotechnical activities. (DCP.X2.1.00020, Attachment 5, fn. 5 [explaining that some of the listed mitigation measures are not applicable].) In addition, DWR repeatedly states that key mitigation measures in the Delta Plan are “not applicable”. (DCP.X2.1.000202024, 4-50 [SWPPP], 4-56 [Phase I Site Assessment], 4-49 [Noise control Plan].) It is unclear why DWR did not simply provide a list all of the *applicable* mitigation measures necessary to determine consistency with G P1(b)(2).

### **Conclusion**

DWR’s approach to the G P1(b)(2) consistency determination is inadequate to support a finding that the mitigation measures that DWR intends to implement are equally or more effective than the applicable portions of the corresponding Delta Plan mitigation measures. (DCP.X2.1.00020, p. 4-20.) Among other flaws, DWR fails to provide a substantive comparative analysis to show compliance with G P1(b)(2). DWR’s boilerplate citations to its own mitigation measures (many of which DWR claims do not even apply to the project) fails to support the finding that environmental commitments and mitigation measures in the Delta Tunnel EIR are equally or more effective than the applicable measures identified in the Delta Plan PEIR at reducing impacts on the environment for the geotechnical activities, as required by G P1(b)(2).