

Lookout Slough Project Consistency Appeal (Cert. ID: C20215)

Solano County Water Agency (C20215-A2)



Substantial Evidence

This Council is must find substantial evidence in the administrative record to support DWR's determination that the Lookout Slough Project is consistent with the Delta Plan.

In California, substantial evidence is:

- more than a mere scintilla
- so considerable that any reasonable person would agree with the claim that the evidence substantiates
- Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion
- not synonymous with 'any' evidence.
- reasonable in nature, credible, and of solid value.

Substantial Evidence

We do not have substantial evidence that the Project is consistent with the Delta Plan. In fact, what we have in many instances is no evidence or contradictory evidence.

DWR and EIP have taken the position that environmental analysis conducted pursuant to CEQA is sufficient to demonstrate consistency with the Delta Plan. This is not the case.

As a result, several critical issues of consistency still cannot be confirmed by DWR regarding SCWA's diversions from the North Bay Aqueduct (NBA) which poses a threat to an essential water supply for over 500,000 Californians.

NBA Issue #1 – Water Quality

DWR remains **unable to confirm** that the proposed Project will not adversely impact NBA operations, particularly regarding dissolved organic carbon (DOC).

“the current scientific understanding is not sufficient to make accurate predictions to determine the significance of direct, indirect, and cumulative impacts of the Proposed Project’s effects on dissolved organic carbon...” Final EIR Master Response Pg.3-22

Future water quality is a major concern for municipalities using Delta water and current water quality regulations and policies for surface water do not directly apply to many of the drinking water quality constituents of concern.

NBA Issue #1 – Water Quality

DWR's failure to confirm its Project will not adversely affect municipal drinking water supplies from the NBA, in addition to its own concession that it did not assemble enough data and information to make an "accurate prediction" regarding DOC requires this Council to find an inconsistency with the Delta Plan until DWR is able to provide feasible and effective mitigation for these potential adverse impacts.

NBA Issue #2 – Invasive Fish Species

NBA operations are covered by an Incidental Take Permit which requires the NBA pumping plant to cease operations whenever special status fish are present. Yet, the stated goal of the Project is to increase the abundance of special status fish species.

Therefore, if the Project meets its stated goals, less water will be available to municipal water users through the NBA intake each and every year as a direct result of the Project. This consequence has not been studied or evaluated in relationship to the mandatory elements of the Delta Plan.

NBA Issue #2 – Invasive Fish Species

DWR's final EIR response regarding local diversions and special status fish species focuses on agricultural diversions and omits discussion of the NBA or other M&I diversions (See pg. 3-15, 3-16).

This lack of analysis is significant as DWR's concludes that most water diversion activities occur when comparatively few special status fish species are present, and while this may be true for agricultural diversions, **it is not for the NBA as most recently illustrated by the two pumping curtailments SCWA already experienced in early 2021.**

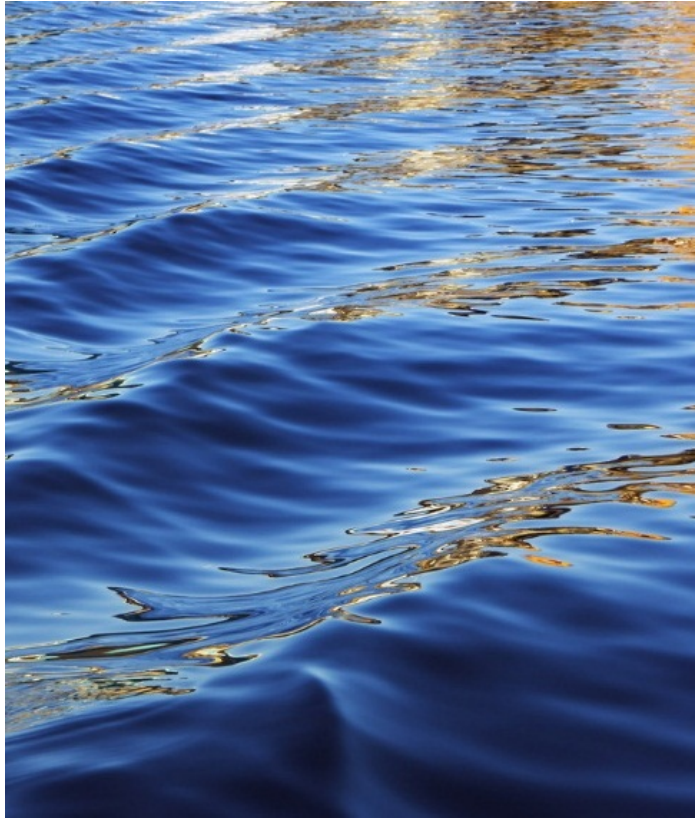

This illustrates yet another failure on the part of DWR to affirmatively demonstrate consistency with Delta Plan goals which includes avoiding the introduction of and habitat improvements for invasive nonnative species.

In summary...

DWR has chosen to forge ahead with this habitat restoration project to fulfill its own obligations to U.S. Fish and Wildlife Service and is proceeding on the hope that the restoration work will not adversely impact NBA operations or water quality.

Simultaneously, DWR has failed to offer potential mitigation measures should these anticipated adverse impacts occur.

As a result, this Council should conclude and rule that DWR's consistency determination is fatally flawed and **must be rejected**.



Selected SCWA Responses to Council Questions

Policy ER P5:

Avoid Introduction of and Habitat Improvements for Invasive Nonnative Species

A notable concern in the YBCSC are nonnative invasive plant species which have proliferated throughout the region

- DWR O&M Delta Field Division staff have observed invasive weed species at the NBA Barker Slough Pumping Plant, a facility currently in need of upgrades for the sole purpose of aquatic weed management
- SCWA is highly concerned that based upon current O&M issues at the NBA facility and the persistence of invasive weed species at prior restoration projects documented by DWR itself, DWR **does not have the adequate resources of strategies in place to effectively deal with invasive weed species once established within the proposed Project**

- Project does not involve (1) agriculture as the primary use nor does it (2) support the economic viability of agriculture and does not (3) maintain the validity of the underlying land use designation, all in violation of the Agricultural land use designation adopted for the project area in the Solano County General Plan
- Purported Project uses **directly** conflict with permitted and consistent uses listed in the Williamson Act, relevant as the project area is subject to three Williamson Act contracts

Policy DP P2: Respect Local Land Use

The Lookout Slough Project is **wholly inconsistency** with the agricultural land use designation and resource overlay in the Solano County General Plan

CONCLUSION

SCWA, Napa County Flood Control & Water Conservation District, the urban cities in Napa & Solano County that depend on the NBA, Reclamation District 2068, and Reclamation District 2060 have continuously provided comments to DWR in regards to the Project. To date, DWR has not submitted any proposals or mitigation to alleviate or reduce conflicts from the proposed Project. Nor has DWR provided any alternatives, strategies, or backup mitigation for the existing NBA facility, which is the primary municipal water supply for 500,000 residents and businesses in Napa and Solano County.

CONCLUSION

This Council legally has no choice but to conclude that DWR's consistency determination is unsupported and must be rejected.

SCWA believes there is ample opportunity to work collaboratively with DWR to make the project consistent with the Delta Plan by including potential mitigation measures, and is willing to do so.