

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

Introduction

This appeal 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.”). The County is a political subdivision of the State of California. Two-thirds of the legal Delta lies within the County, and the Delta comprises over one-third of the County’s total area. Approximately 167,000 people live in the San Joaquin County portion of the Delta. CDWA is a political subdivision of the State of California and was created by the California Legislature under the CDWA Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-1.1, et seq.). LAND is a coalition of reclamation districts in the northern Delta. For purposes of this Appeal, these entities are collectively referred to as “SJC et al.” The SJC et al. parties were involved in the development of the first Delta Plan in 2013 and the 2018 amendments, as well as the Consistency Appeal process for the Department of Water Resources’ (“DWR”) Delta Tunnels (a.k.a. “California WaterFix”) project in 2018.

The 2009 Delta Reform Act recognizes that the Delta is not a mere conduit in a statewide plumbing system. It aptly describes the Delta as “a critically important natural resource for California and the nation” which “serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.” (Wat. Code, § 85002.) The Delta Plan must advance the “coequal goals” (Wat. Code, § 85300, subd. (a)), which means “the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, § 85054.)

No one has a greater stake in the future of the Delta “as an evolving place” than the families, farmers, business owners, workers, and others located in the Delta that the SJC et al. parties represent. The Delta supports a multi-billion-dollar annual agricultural industry, a substantial and growing tourism industry (including agri-tourism), a large and well-established recreational economy, historically significant “legacy” communities, and parks and wildlife preserves that enable residents and others to experience the Delta’s unique natural treasures. Over a thousand miles of Delta levees maintained at great expense by reclamation districts protect farms, businesses, and communities from the waters of the Delta. The levee system, transportation and other infrastructure within the

Delta are vital to the local, regional and statewide economies, as well as to the safety and welfare of many thousands of people living in and near the Delta. Beyond statistics and economics—the unique aesthetic, cultural, and environmental characteristics of the Delta are critical to both the current population living and working in the Delta and to future generations of Californians.

According to DWR, this certification of consistency is limited to certain preliminary geotechnical work related to the Delta Conveyance Project’s (“Delta Tunnel”) planning and design and is not a certification of consistency for the Delta Tunnel (DCP.X2.1.00020 2024, p. 1-1.) But as described in this appeal, because the SJC et al. parties are ground zero for the impacts of the Delta Tunnel, they have reviewed DWR’s most recent “Consistency Determination” carefully, with a focus on DWR’s claims that the proposed geotechnical activities are consistent with Delta Plan and 2009 Delta Reform Act requirements. Similar to DWR’s 2018 Delta Tunnels’ Consistency Determination, the geotechnical activities are also seriously deficient in critical areas, including their failure to comply with the requirements of the Delta Plan, the 2009 Delta Reform Act, and the Delta Stewardship Council’s (“Council”) adopted regulations pertaining to covered actions.

Procedural issues are addressed below, and inconsistency with specific Delta Plan Policies/Regulations are discussed separately.

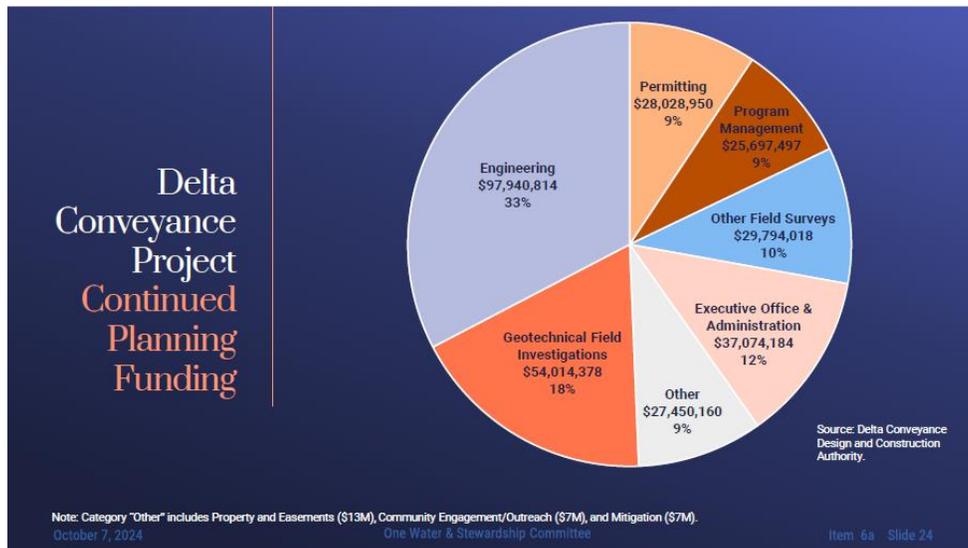
Misleading and Incorrect Information in DWR’s Consistency Certification

In its Certification, DWR claims that “DWR and participating public water agencies have authorized funding for planning and design of the Delta Conveyance Project.” (DCP.X2.1.00020 2024, p. 1-1, fn. 2.) This is incorrect. DWR is currently in the process of obtaining additional funding needed to continue planning for the Delta Tunnel Project. The slides below, for instance, were presented at a Metropolitan Water District (“MWD”) One Water Committee meeting on October 7, 2024.¹ These slides show that for planning funds 2026-2027, DWR is currently seeking an *additional* \$300 million dollars from Delta Tunnel participating agencies, and about \$54 million of which would go toward geotechnical field investigations (slide 24).² As of October 7, 2024, only four such agencies had pledged additional planning funds (slide 25).

¹ Available at:
<https://mwdh2o.legistar.com/View.ashx?M=F&ID=13349445&GUID=A997325E-6E59-4E4E-92E1-BD31CD990E9C> (ppt);
https://mwdh2o.granicus.com/player/clip/11105?view_id=12&redirect=true (recording).

² DWR estimates that the cost of the work contemplated in the Consistency Certification is \$45 million. (DCP.X2.1.00020 2024, p. 3-13.)

2024-2026 Proposed Geotechnical Activities
 Consistency Appeal (Cert. ID: C20242)
 Introduction & Procedural Matters



DCP Participating Agencies

Region	Contractors	
M&I	South Bay	Alameda County FC&WCD, Zone 7 Alameda County WD Santa Clara Valley WD
	San Joaquin Valley	Dudley Ridge WD Kern County WA
M&I	Central Coastal	San Luis Obispo County FC&WCD
	Southern California	Antelope Valley-East Kern WA Santa Clarita Valley WA ✓ Coachella Valley WD Crestline-Lake Arrowhead WA ✓ Desert Water Agency Metropolitan Water District Mojave Water Agency Palmdale Water District San Bernardino Valley MWD ✓ San Gabriel Valley MWD San Geronio Pass WA ✓ Ventura County WPD

Note: Map not drawn to scale.

✓ indicates board action taken to support additional DCP planning and preconstruction activities.

October 7, 2024 One Water & Stewardship Committee Item 6a Slide 25

Permitting, Planning & Litigation Considerations

Full Participation
Close existing funding gap

Pending Litigation
CEQA, Geotech,
Bond Validation, etc.

Delta Stewardship Council
Certification of Consistency

Water Rights Permitting
Hearing set to begin
in January 2025

October 7, 2024 One Water & Stewardship Committee Item 6a Slide 26

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

DWR is basically submitting this Consistency Certification under protest. “DWR does not understand the 2024–2026 Proposed Geotechnical Activities to constitute ‘initiating the implementation of’ the Delta Conveyance Project” under Water Code section 85225, and “disagrees with the Superior Court’s ruling” on June 20, 2024, which “enjoined DWR ‘from undertaking the geotechnical work described in Chapter 3 of the Final EIR,’ which includes the 2024–2026 Proposed Geotechnical Activities, ‘prior to completion of the certification procedure that the [Delta reform Act requires.]’” (DCP.X2.1.00020 2024, p. 2-1 and fn. 7.) In analyzing the potential of the activities to have a significant impact on the coequal goals, DWR states that the activities “will have no impact (and therefore would not have the potential to result in a significant impact) on the achievement of one or both of the coequal goals or on the implementation of any government-sponsored flood control program.” (DCP.X2.1.00020 2024, p. 4-4.)

DWR’s approach also disregards the applicability of the concept of piecemealing on covered actions, claiming:

To be clear, this is not “piecemealing” as one might use that term in the context of the California Environmental Quality Act (CEQA) (California Public Resources Code § 21159.27). Regarding thresholds, DWR is unaware of authority to suggest that “piecemealing” concerns apply outside the CEQA context. But even if they did, such concerns are not present here. This is not a situation where DWR seeks to “allow environmental considerations to become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences” (*Banning Ranch Conservancy v. City of Newport Beach* [2012] 211 Cal.App.4th 1209, 1222 [internal citations omitted] [*Banning Ranch*]). This certification of consistency in no way diminishes the future review to which the Delta Conveyance Project will be subject; on the contrary, DWR is pursuing this certification of consistency to continue to collect data that may inform a future certification of consistency for the implementation of the Delta Conveyance Project. Indeed, DWR is pursuing this certification of consistency precisely so that a future certification of consistency (for the implementation of the Delta Conveyance Project) will be as thorough and informative as possible. This approach enhances, rather than diminishes, the DSC’s and the public’s interest in the robust and informed analysis of a proposed action.

(DCP.X2.1.00020 2024, p. 1-2, fn. 4.)

The explanation provided by DWR ignores the fact that the activities for which the Consistency Certification is being submitted is a subset of the overall project DWR defined as a covered action in its Environmental Impact Report (“EIR”) for the Delta Tunnel, certified in December 2023.³ Whether several actions constitute a single project is generally a question of law. (*Tuolumne County Citizens for Respondent Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223-24.) According to the California Supreme Court: “[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 396; see also *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385 [where two activities are “part of a coordinated endeavor” they may constitute a single project].)

While what constitutes a “reasonably foreseeable consequence” has been described as “murky” (*Banning Ranch, supra*, 211 Cal.App.4th at 1222), courts have identified two types of cases where improper piecemealing occurs: (1) “when the purpose of the reviewed project is to be the first step toward future development”; and (2) “when the reviewed project legally compels or practically presumes completion of another action.” (*Id.* at 1223.) DWR states that collecting information through the geotechnical investigations will inform a future certification of the Delta Tunnel. (DCP.X2.1.00020 2024, p. 1-2, fn. 4.) But this approach just doubles down on the ultimate purpose of the Geotechnical Activities: to plan the Delta Tunnel.

DWR’s claim that piecemealing cannot apply to the Council’s consistency review process because that process is not part of CEQA is mistaken. (DCP.X2.1.00020 2024, p. 1-2, fn. 4.) Just as subdividing a large project into parts minimizes environmental impacts, subdivision of a covered action into separate pieces minimizes the effect of the subparts on the achievement of the coequal goals. (See Wat. Code, § 85057.5, subd. (a).) As the Legislature chose, in the Delta Reform Act of 2009, to refer to standards and definitions in CEQA with respect to defining covered actions, it is appropriate to also prohibit piecemealing of covered actions in multiple consistency reviews. Specifically, “Covered actions” include plans, programs, or projects as defined by CEQA. (Wat. Code, § 85057.5, subd. (a); Cal. Code Regs., tit. 23, § 5001, subd. (k); see Pub. Resources Code, § 21065; CEQA Guidelines, § 15378 [defining a ‘project’ as ‘the whole of an

³ Tellingly DWR’s own certification index file naming system labels piece of evidence “DCP”, indicating the close relationship between the geotechnical activities and the overall Tunnel Project. (DCP.X2.1.00021, OverallMap.)

action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment”) The geotechnical activities should thus be reviewed in one CEQA document (the EIR certified in 2023) and be reviewed as one covered action for purposes of consistency review under Water Code Section 85022.

DWR’s Consistency Certification incongruously claims that the geotechnical activities do not implicate *any* of the Council’s policies adopted to implement the Delta Plan. (DCP.X2.1.00020 2024, pp. 4-4 to 4-5 [stating that each of the Council’s 13 policies “Does not apply”].) At the same time as DWR claims that the geotechnical activities have “no impact” on the achievement of the coequal goals, DWR also purports to consider whether the activities are covered by any of the Delta Plan’s regulatory policies. (DCP.X2.1.00020 2024, p. 4-4.) Breaking apart a single covered action into pieces and then claiming that none of the policies apply to the piece under review fails to “facilitate[e] DSC’s decision-making process,” as claimed by DWR. (DCP.X2.1.00020 2024, pp. 4-4, 4-19.)

DWR’s approach also misconstrues the court’s order, which required consistency review of the entire covered action defined in the EIR—the Delta Tunnel project. The court held that the Activities are “necessarily part of a ‘covered action’ within the meaning of [the Act]” and that DWR is “enjoined from undertaking the [Activities] prior to completion of the certification process that the . . . Act requires.” (DCP.X2.1.00003, pp. 4, 11.) Here, the court has already ruled that the geotechnical activities and the overall Delta Tunnel project are part of the same covered action and should be reviewed for consistency together. As a result, the Council must reject DWR’s attempt to certify consistency with the Delta Plan for only one part of the overall covered action that DWR itself already defined in the 2023 EIR, and that the court has now also affirmed is one covered action.

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.) The SJC et al. parties reserve the right to submit additional written factual or evidentiary materials as permitted by the Council’s regulations concerning consistency appeals.

Objection to DWR’s Continued Planned Ex Parte Communications with the Council

So-called “early consultation” on the Delta Tunnel project has been occurring ever since DWR withdrew its consistency certification 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.

Now, in its transmittal letter to the Council, DWR states that in addition to submitting the Consistency Certification for the geotechnical activities, “DWR is also participating in separate early consultation with Council staff on the Delta Conveyance Project.” (DCP.X2.1.00022.) The SJC et al. parties strongly object to DWR and Council staff continuing to communicate in violation of the Council’s prohibitions on ex parte communications subsequent to the filing of this appeal. (Cal. Code Regs., tit. 23, § 5024, citing Gov. Code, § 11430.10.) An ex parte communication is a “communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.” (*Ibid.*)

DWR’s Consistency Certification is clear that the geotechnical activities are “related to the Delta Conveyance Project’s planning and design” and that these activities “will ensure that DWR and other agency decisionmakers have sufficient planning and design details to make fully informed permitting and funding decisions necessary before DWR may implement the Delta Conveyance Project.” (DCP.X2.1.00020 2024, pp. 1-1, 1-2.) The admittedly close connection between the geotechnical activities and the overall Delta Tunnel project means that it is not possible to continue having “early consultation” on the Delta Tunnel while appeals are pending on the closely related geotechnical activities. To preserve the integrity of the Council’s consistency review process, the Council must specify that these secret meetings cannot continue once appeals are filed.

Conclusion

The entire Delta Tunnel project should be reviewed for consistency with the Delta Plan in one certification. Even if reviewed separately, the geotechnical activities are inconsistent with the Council’s adopted regulatory policies, including those applicable to the Coequal Goals and Mitigation Measures (G P1) and Respecting Local Land Use (DP

2024-2026 Proposed Geotechnical Activities
Consistency Appeal (Cert. ID: C20242)
Introduction & Procedural Matters

P2). The following sections of this Appeal detail additional specific bases for the inconsistency of the geotechnical activities with the Council's regulatory policies and other applicable requirements. Only by granting this Appeal and remanding the action to DWR, can the Council ensure proper consistency review of the entire Delta Tunnel project.

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

**The Project Is Not Consistent with the Coequal Goals
(G P1; 23 Cal. Code Regs, § 5002)**

The Coequal Goals have been described as a “three-legged stool” consisting of a reliable water supply, ecosystem restoration and protecting the Delta as a place.¹ Those goals are all specifically included in the statutory and regulatory definitions of the term. Under the Coequal Goals adopted by the California Legislature in 2009, the basic goals of the state for the Delta are to:

- (a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.
- (b) Protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities.
- (c) Ensure orderly, balanced conservation and development of Delta land resources.
- (d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

(Pub. Resources Code, § 29702; Wat. Code, § 85054, Cal. Code Regs, tit. 23, § 5002, subd. (i).)

DWR’s Consistency Certification documents fail to address at least two elements of the coequal goals with respect to the project, as described below.

The Project Does Not Protect, Restore, or Enhance the Delta Ecosystem

DWR’s Consistency Certification documents falsely claim that the Geotechnical Activities would have no impact on strategies that protect, restore, or enhance the Delta

¹ See Exhibit SJC-1, Santa Clara Valley Water District BDCP workstudy session, part 3: Russell van Loben Sels gives the in-Delta perspective on the BDCP, Maven’s Notebook, Nov. 26, 2024.

ecosystem. (DCP.X2.1.00020 2024, pp. 4-3.) DWR’s claim of the project having a “limited scope and impact” is incorrect and lacks substantial evidence support.

The Geotechnical Activities would have a substantial effect on the protection of the Delta ecosystem. (Wat. Code, § 85054.) The proposed Geotechnical Activities include hundreds of investigations that spans the entire eastern and southern Delta, with clusters around the towns of Locke, Hood, and Walnut Grove. (DCP.X2.1.00020 2024, Figure 1. Geotechnical Activities Mapbook, pdf pp. 10-20.) These activities also require heavy equipment, noise, light, and vibration, that would occur over a period of two years in some areas that are mapped connectivity corridors and natural habitat blocks.

DWR claims that “Geotechnical activities will not involve construction, or placement of powerlines, will avoid take of listed species and habitat loss, will not involve surface disturbance that would disrupt terrestrial wildlife connectivity and movement.” (DCP.X2.1.00020 2024, pp. 4-24, 4-28, 4-31, and Attachment 4, p. 19.) The FEIR for the Delta Conveyance Project, however, included a detailed appendix for terrestrial wildlife movement. (Appendix 13E; DCP.D1.1.00117.) Figure 13-E2 depicts “Natural Landscape Blocks” and “Essential Connectivity Areas” clustered in the same portion of the Delta where the DWR proposes a vast program of geotechnical work, that will introduce traffic, noise, light, and vibration for extended periods of time. The Consistency Certification documents fail to include this readily available information, and wildlife corridors *are not even mentioned* in DWR’s Evaluation of Consistency with Delta Conveyance Project’s Final EIR. (DCP.X2.1.00004.pdf.)

DWR’s own environmental review documents show that the Geotechnical Activities would have a substantial effect terrestrial wildlife connectivity and movement, and therefore meet the test for a covered action in Water Code Section 85057.5, subdivision (a)(4).

The Project Does Not Protect the Delta as an Evolving Place

As discussed above:

The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

(See Pub. Resources Code, § 29702, subd. (a).)

DWR’s discussion of the Coequal Goals, however, fails to mention protection and enhancement of “the unique cultural, recreational, natural resource, and agricultural

2024-2026 Proposed Geotechnical Activities
Consistency Appeal (Cert. ID: C20242)
G P1(b)(1), Coequal Goals

values of the Delta as an evolving place.” (DCP.X2.1.00001.pdf, pp. 4-2 to 4-3.) This omission is critical and telling with respect to DWR’s conclusion of the project having no impact on the Coequal Goals. As DWR fails to make a finding with respect to protecting the Delta as a place, its conclusion that the geotechnical activities would have “no impact” on the Coequal Goals is unsupported.

References

Exhibit SJC-1, Santa Clara Valley Water District BDCP workstudy session, part 3:
Russell van Loben Sels gives the in-Delta perspective on the BDCP, Maven’s Notebook,
Nov. 26, 2024

EXHIBIT
SJC-1



(<https://mavensnotebook.com>)

Home (<https://mavensnotebook.com>) > NEWS AND FEATURED ARTICLES (<https://mavensnotebook.com/category/featured-articles/>) > Notebook News and Features (<https://mavensnotebook.com/category/featured-articles/notebook-features/>)

Santa Clara Valley Water District BDCP workstudy session, part 3: Russell van Loben Sels gives the in-Delta perspective on the BDCP

by Maven (<https://mavensnotebook.com/author/adminnotebook/>) | Notebook News and Features (<https://mavensnotebook.com/category/featured-articles/notebook-features/>) | November 26, 2013 | <https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/#respond> | 373



What do those that live and farm in the Delta think of the Bay Delta Conservation Plan? Is there a solution for the Delta that the in-Delta interests would support? Russell van Loben Sels, a fourth generation farmer, gives the in-Delta perspective in this last segment of coverage from the Santa Clara Valley Water District's second workstudy session on the BDCP.

Note: Links to all three parts are available at the bottom of this post.

Russell van Loben Sels, fourth generation Delta farmer

"It's interesting to note as we go over time, what it's meant to save the Delta," began Russell van Loben Sels. "About four years ago, I tried to read some memoirs that my great grandfather had written in his large script and it was very difficult, but I got through most of it with some help from some professionals. To save the Delta in 1876 would be considered destroying the Delta today. His vision of the Delta was to channelize the rivers, to create farmland, to create a community and use the Delta in that manner. So I don't suggest that that's what we should do today, but it's interesting to me how different today is than it was in 1876."

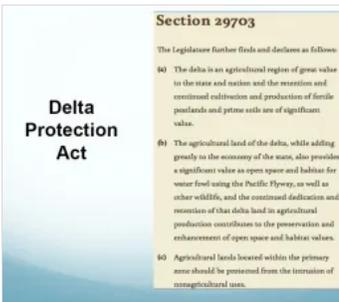


(<https://i0.wp.com/mavensnotebook.com/wp-content/uploads/2013/11/Delta-windmill-and-farm.jpg?ssl=1>)

Photo by Maven

HISTORICAL DEVELOPMENTS

"In the last 20 years, we have worked very hard to save the Delta," he said. "In 1992, the Delta Preservation Act was passed. It was the first process that I was involved in ... the fear at that time was that the Delta was being urbanized." He explained that the Act created a primary zone (<https://mavensnotebook.com/glossary/delta-primary-zone/>) and a secondary zone. The secondary zone is still subject to urbanization, but the primary zone has pretty much been fixed where it was in 1992, 20 years ago; there's been very little development, he said.



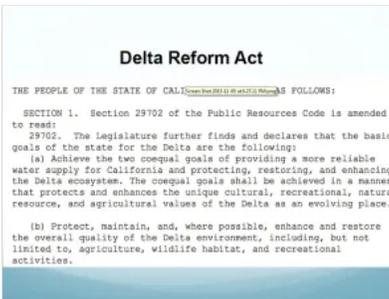
(<https://i0.wp.com/mavensnotebook.com/wp-content/uploads/2013/11/Russell-3.jpg?ssl=1>)The main focus of the Delta Protection Act was to protect, preserve and enhance the natural resources and all resources, and the cultural and communities in the Delta at the time, he said, pointing out that Section 29703-c of the Act states that 'agricultural lands located within the primary zone should be protected from the intrusion of non-agricultural uses.'

"The next area that a lot of effort was spent in was the CalFed (<https://mavensnotebook.com/glossary/cal-fed-bay-delta-program/>) process, which came to an end basically in 2000 with the Record of Decision," said Mr. van Lobel Sels. "I was not involved substantially in that process although I did go to meetings and sound off now and then; but that process ended and much of what happened in CalFed has continued in the BDCP process."

In 2007, Governor Schwarzenegger created a Blue Ribbon Task Force to examine the Delta and come up with a vision for the future for the Delta. "Now things had changed a little bit between 1992 and 2007; there was more of a focus on how the Delta functioned as a water conveyance facility – how the plumbing worked, and so in the Delta Vision process there was a lot more discussion and a lot more examination of the Delta and its many, many roles and the many constituents that depended upon the Delta," he said. "Species became more involved ... we became more focused on some different elements of the Delta. Ecosystem restoration and also the Delta's values and uniquenesses were discussed in that process."



In 2008, the strategic plan developed from the Delta Vision process articulated 12 goals, said Mr. van Loben Sels. "The first created the coequal goals (<https://mavensnotebook.com/glossary/coequal-goals/>) that we have today: reliable water supply and ecosystem restoration. Goal number two recognized the unique values that are in the Delta, including farming, and stated that these values should be preserved in any future Delta. It went on in the narrative of this goal to state that 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, or the entire vision."



(<https://i0.wp.com/mavensnotebook.com/wp-content/uploads/2013/11/Russell-8.jpg?ssl=1>)"From Delta Vision, we moved on to the Delta Reform Act," Mr. van Loben Sels continued. "In 2009, the Delta Reform Act became law and it attempted to implement the vision. You'll notice in section 129702, it put the coequal goals into law, but it qualified how the coequal goals shall be achieved, it stated 'the coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources and agricultural values of the Delta as an evolving place.' Section B stated that 'the Act would protect, maintain, and where possible enhance and restore the overall quality of the Delta environment including but not limited to agricultural, wildlife habitat, and recreational activities,' so when we talk about the coequal goals, very frequently, we just talk about two goals. We don't talk about the fact that they shall be achieved in a manner that protects the resources of the Delta to include agriculture."

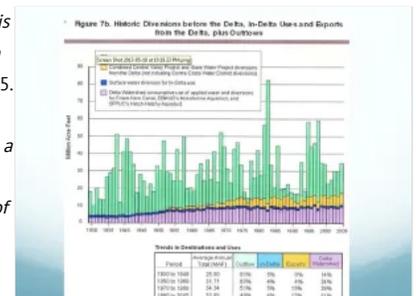
"The Delta Reform Act did something else," he added. "It also stated that in the future, future water supply needs statewide should place less reliance on the Delta."

EVALUATION OF THE BAY DELTA CONSERVATION PLAN

"Now you can imagine what we in the Delta think about BDCP," said Mr. van Loben Sels. "The opinion ranges from terrible to very, very, very, very, very terrible. But that's BDCP the preferred alternative – the 15,000 cfs tunnels and the 9000 cfs diversions. From the Delta perspective, there are some major flaws in the process. When I say a process flaw, what I mean is if you start off in the wrong direction, you may end up in the wrong direction, so BDCP is directed by a certain set of desires, rules, whatever have you. The goals in BDCP, number 1, do not align with the Delta Reform Act, and that, for me, is the first process flaw. Secondly, there was no analysis to determine the amount of water needed to sustain a healthy Delta and the amount available for export in designing diversions facilities. And the third is limited criteria for selecting alternatives to study."

"If we look at the BDCP process flaw number one, we find that the BDCP conservation plan is driven by two primary goals: Assurances regarding operation of the existing SWP and CVP activities and recovery of the fish," said Mr. van Loben Sels. "There's the third item of how you get there in the Delta that is not part of any of the goals of BDCP."

(<https://i0.wp.com/mavensnotebook.com/wp-content/uploads/2013/11/Russell-14.jpg?ssl=1>)"Flaw number two, there's no analysis to determine how much water is really available to export, and how can you design a facility without knowing how much you can get out of it?" said Mr. van Loben Sels. He then presented a slide that showed historic diversions from the Delta from 1930 to 2005. "We've talked about outflow, and this slide really shows what's happened in the last 40-50 years. If you look at the graph on the bottom, the period 1930 – 1949, second column is Delta outflow, 81%. If you look at 1990 – 2005, Delta outflow was 48%. That's a major difference and you can imagine when you take 50% of the water out of any river system, you are going to have some consequences, and that's what we've had in this system. So that's why when I come back to there needs to be an understanding of how much water is really available to export from this system before we start designing facilities to do that job."



The third flaw is that there is limited criteria for selection of alternatives. "It was stated recently in a meeting that if these two criteria are not met, the proposal is not studied: number one, they expect you to pay for it, and number two, they expect the agencies to permit it," he said. "I submit that there are some variations of criteria that could be used to determine what a facility would look like that could be supported by a much wider much more robust group of people than just the contractors, so basically what I'm saying to you is we need to look beyond just the contractors paying for conveyance, and I think that there probably are some opportunities there."

"Whether the agencies will permit it or not, that's probably still a very valid criteria, but sometimes you need to really examine things to determine if they can be permitted or not, than just checking it off and saying we're not going to permit that and we're not even going to study to see if we can permit it," he said, adding that the western Delta conveyance proposal suggested by John Cain was a good example. "It has some problems with it, but rather than just writing it off as no, that's where Delta smelt live, let's see if we can make it work."

The problems with the BDCP project from our perspective are many, he said. *"For one, the amount of water that would be available through this conveyance facility is unknown. I've heard estimates of between 4.3 MAF to 5.8 MAF – that's a very big difference. I think the normal right now is about 5.4 MAF, so you might get a little bit more or you might get a lot less. That's an unknown."*

Another problem is the high cost. *"Costs estimates I've heard range between \$25 billion and \$50 billion. Again, a pretty big difference and a big unknown,"* he said. *"How do you do a cost benefit analysis if you don't know how much water you can get from it and you don't know how much it's going to cost? The cost benefit analysis that I think you're looking at today are nothing more than an exercise of knowing where you want to be and making the assumptions to get there."*

Another unknown is the effect of habitat restoration. *"Habitat restoration may not recover the species, and if they don't recover the species, what happens to the permit?"* he said. *"Other mitigation may not recover species. Is the length of the permit the proper length? As you heard Leo say, maybe 10 years is appropriate or a succession of 10 year periods. And the governing structure, I think we've all thrown darts at the governing structure, and that hopefully has changed in the final document. I'm not sure that the Delta interests will be happy with it. It sure needed a change."*

Those are the problems that the Delta communities see in the BDCP, but the biggest problem is are the negative impacts on the Delta communities, he said. *"The construction impacts are huge. For ten years, between the area of Freeport and Courtland, life will be unbearable. We won't be able to do business, and things will come to an actual halt,"* he said. *"In that area, there are people who are being told that sure, we're going to dewater your area and your wells may not work, but we'll try to get you water somehow. There are 48 negative impacts to the area of the northern Delta that are unmitigated,"* he said, citing examples of increased salinity and other water quality issues as some of the 48 negative impacts.

"Water quality impacts – whenever you take water out of the river, beyond that point flow is going to be less, and so if you take water out of the north, flow to the west through the western tributaries is going to be less, tidal pressure is going to be more coming in the other way, and flow is the hydraulic barrier to the ocean," he said. *"Flow determines water quality in the Delta. ... operations are key, so if you take it out, the hydraulic barrier is reduced and salinity will increase, so the areas where salinity will increase, under the program, are in the western Delta and in the Central Delta. The southern Delta is already pretty well in trouble because only 30% of the San Joaquin River reaches the Delta, and that hardly even has enough pressure to create outflow, it just goes back and forth."*

And finally, the impacts of conversion of agricultural land. *"All of the efforts to save the Delta in the last 20 years have included an effort to maintain agriculture as viable enterprises, and this does not,"* he said. *"This has major impacts on agriculture, not only the footprint where the project will be built, but when you start taking out hundreds of thousands of acres for habitat conservation, you restrict other agricultural lands, and you have a major impact on the industry that is the driving force of the economy in the Delta."*

A DELTA SUPPORTED SOLUTION

"We in the Delta understand," said Mr. van Loben Sels. *"What's happening today is unsustainable. It's unsustainable for you, it's unsustainable for the fish, and it's unsustainable for us."*

"It's unsustainable for us because change is going to happen and so we want to be part of that change, we have advocated for change, and we understand that the landscape needs to change," he said. *"There needs to be more habitat for fish – if we can move fish into the Yolo Bypass away from the [Delta exports \(https://mavensnotebook.com/glossary/delta-exports/\)](https://mavensnotebook.com/glossary/delta-exports/), it takes the pressure off of trying to create a large northern diversion facility."*

"The way water is moved through the Delta needs to change, we understand that," he continued. *"We have supported a through Delta facility similar to Corridors, but we're open to discuss other alternatives such as John's – alternatives that help preserve the Delta. We see benefits from through Delta conveyance – these are things that, from our perspective, many of them are going to need to be done anyway, because you are talking about a dual conveyance facility with 51% of the time you're taking water out of the south Delta, you're going to have impacts that are going to have to be mitigated and you're going to have to deal with those. But through-Delta costs less and there's more support."*

Through-Delta conveyance also maintains the common pool concept, he said. *"The common pool concept is basically if we're all taking water out of the same pool, we're all going to work very hard at keeping it at the correct water quality. If the fear with the northern diversion facility site is that if a large amount of water is taken out in the north, then the south has poorer water quality, and so the common pool concept is very important, especially to the central and southern Delta folks."*

Through-Delta conveyance eliminates some of the in-Delta opposition, and it can be accomplished more quickly, he said. *"In addition, it can be accomplished in increments so you can do things and see what happens rather than building a huge facility and saying 'it may work or it may not work:'"*

"The difficulty I see with building this huge facility is while it's being built, decision tree [adaptive management \(https://mavensnotebook.com/glossary/adaptive-management/\)](https://mavensnotebook.com/glossary/adaptive-management/) are going to determine how it's operated and after it's built, operations are still up in the air," he said. *"As long as the facility is large enough to damage the Delta and the water quality in the Delta, the residents of the Delta will be opposed to it. If we can resolve to get a small facility that physically cannot damage the Delta, then some of the fear is abated"*

"My hope is that all of us leave a legacy for those who follow in our footsteps that Delta that is responsive to the needs of all of the constituents, and when I say constituents, I don't just mean people," said Mr. van Loben Sels. *"I mean the critters, the birds, the bees, and us too, and if we work very hard at that, we might end up with something that really works and can be enjoyed by those that follow us."*

Director Kennedy asked if the agricultural interests been heavily involved in the development of the BDCP?

"Some of the agricultural interests have, but not the Delta agricultural interests," answered Mr. van Loben Sels. *"The only participant from the Delta was the North Delta Water Agency, and the difficulty with participating in the formation of the BDCP was you had to sign an agreement that you would support the outcome. Well, if you're a very small minority and you see the direction the train is going in and you don't like where it's going to go, you don't want to be in a position that you have to support it."*

Director Kennedy: You talk about the benefits of the through-Delta conveyance. And by through-Delta conveyance, I assume you pretty much mean what we're doing today as far as Delta water flowing through the Delta and pumping from the south.

"I am the chair of a group called the Delta Caucus which is a group of five county farm bureau organizations that we put together to address many of the different processes that are going on in the Delta, and that's our official position," Mr. van Loben Sels replied. "However, I understand the benefits of going beyond that, and the need for perhaps going beyond that, but when we get to 15,000 cfs, 9000 cfs, we're talking about a huge huge project that can ultimately have major negative impacts on the Delta and water quality. We would never support that large a facility; however a smaller facility perhaps, and a smaller facility in conjunction with facilities that, for example, in the western Delta that support the common pool concept, than it becomes even easier to move off of that through-Delta position."

Director Kennedy asked is there a compromise option ... ?

"The BDCP is perhaps not the end game," said Mr. van Loben Sels. "What you've done in BDCP, you've studied, and you've put together a lot of really good information, now we need to employ it to put together the best conveyance alternative that we can, and putting it all in the north is not the best."

For more information:

- [Click here \(http://cf.valleywater.org/About_Us/Board_of_directors/Board_meetings/_2013_Published_Meetings/MG52472/AS52485/AI52495/DO52676/1.PDF\)](http://cf.valleywater.org/About_Us/Board_of_directors/Board_meetings/_2013_Published_Meetings/MG52472/AS52485/AI52495/DO52676/1.PDF) to watch the webcast of this meeting.
- [Click here \(http://cf.valleywater.org/About_Us/Board_of_directors/Board_meetings/_2013_Published_Meetings/MG52472/AS52485/AI52495/DO52678/1.PDF\)](http://cf.valleywater.org/About_Us/Board_of_directors/Board_meetings/_2013_Published_Meetings/MG52472/AS52485/AI52495/DO52678/1.PDF) for Russell van Loben Sels power point.
- [Click here \(https://mavensnotebook.com/2013/11/25/mavens-minutes-santa-clara-valley-water-district-workstudy-session-dfws-carl-wilcox/\)](https://mavensnotebook.com/2013/11/25/mavens-minutes-santa-clara-valley-water-district-workstudy-session-dfws-carl-wilcox/) for part 1, Department of Fish and Wildlife's Carl Wilcox.
- [Click here \(http://wp.me/p2XWwm-2vd\)](http://wp.me/p2XWwm-2vd) for part 2, American Rivers' John Cain, The Nature Conservancy's Leo Winternitz, and the NDRC's Kate Poole.

#Bay Delta Conservation Plan (<https://mavensnotebook.com/tag/bay-delta-conservation-plan/>) #Delta conveyance (<https://mavensnotebook.com/tag/delta-conveyance/>)

#Santa Clara Valley Water District (<https://mavensnotebook.com/tag/santa-clara-valley-water-district/>)

 [FACEBOOK \(https://www.facebook.com/sharer/sharer.php?u=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/\)](https://www.facebook.com/sharer/sharer.php?u=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/)

 [TWITTER \(https://twitter.com/share?url=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/\)](https://twitter.com/share?url=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/)

 [LINKEDIN \(https://www.linkedin.com/shareArticle?url=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/\)](https://www.linkedin.com/shareArticle?url=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/)

 [EMAIL \(mailto:body=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/\)](mailto:body=https://mavensnotebook.com/2013/11/26/mavens-minutes-santa-clara-valley-water-district-bdcp-workstudy-session-part-3-russell-van-loben-sels-gives-the-in-delta-perspective-on-the-bdcp/)



[Maven \(https://mavensnotebook.com/author/adminnotebook/\)](https://mavensnotebook.com/author/adminnotebook/) → Publisher

Chris Austin, otherwise known as Maven, has been publishing Maven's Notebook since 2013 and has been aggregating California water news since 2007.

 (<mailto:maven@mavensnotebook.com>)  (<https://www.facebook.com/MavensNotebook>)  (<https://twitter.com/MavensNotebook>)  (<https://www.linkedin.com/in/maven-austin-50765019/>)