Appeal of Certification of Consistency

C20257-A5

Step 1 - Appeallant(s) Information

Appellant Representing:	San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, Restore the Delta, California Sportfishing Protection Alliance, Center for Biological Diversity, Friends of the River, California Indian Environmental Alliance, Sierra Club California, and Little Manila Rising
Primary Contact:	Eric Buescher
Address:	1736 Franklin St., Suite 800
City, State, Zip:	Oakland, CA 94612
Telephone/Fax:	(510) 671-5402
E-mail Address:	eric@baykeeper.org

Step 2 - Covered Action being Appealed

Covered Action ID:	C20257
Covered Action Title:	Delta Conveyance Project
Agency Subject to Appeal:	California Department of Water Resources
Contact Person Subject to Appeal:	Katherine Marquez
Address:	1600 9th Street Bateson, 2nd Floor
City, State, Zip:	Sacramento, CA 95814
Telephone/Fax:	(866) 924-9955
E-mail Address:	dcp_consistency@water.ca.gov
Covered Action Description:	The covered action consists of the construction, operation, and maintenance of new SWP water diversion and conveyance facilities in the Delta that will be part of the SWP and will be operated in coordination with the existing SWP south Delta water diversion facilities. The covered action includes the following five key components and actions: (1) Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that will include state-of-the-art fish screens approved by state and federal fish and wildlife agencies; (2) A concrete-lined tunnel, and associated vertical tunnel shafts, to convey flow from the intakes about 45 miles to the south to the Bethany Reservoir Pumping Plant and Surge Basin at a location south of the existing SWP Clifton Court Forebay; (3) A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany Reservoir Discharge Structure and into the existing Bethany Reservoir; (4) Other ancillary facilities to support construction and operation of the conveyance facilities including access roads, concrete batch plants, fuel stations, and power transmission and distribution lines; (5) Efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction (including the 2024–2026 Proposed Geotechnical Activities). For the purposes of this Certification, the covered action includes the actions described in Final EIR 1 Volume 1, Chapter 3, Description of the Proposed Project and Alternatives (California Department of Water Resources 2023c), refinements to those actions as described in Addendum

1 and Addendum 2 to the Final EIR (California Department of Water Resources 2025a, 2025g), and commitments included in the adopted MMRP (California Department of Water Resources 2023e) (including the Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources [CMP], as described in Final EIR Volume 1, Appendix 3F). For details on the engineering design for the covered action see the Delta Conveyance Project Concept Engineering Report (Delta Conveyance Design and Construction Authority 2024a). For details on operations of the covered action see the Delta Conveyance Project Operations Plan (California Department of Water Resources 2025f). For information on SWP water supply contract amendments, negotiations of project-wide contract amendments, and the Agreement in Principle (AIP) among DWR and many SWP contractors that describes a conceptual approach to cost allocation and the related financial and water management matters, see Final EIR Chapter 3, Section 3.22, Contract Amendments. See the Delta Conveyance Project Certification of Consistency with the Delta Plan (DCP.AA1.2.00001) for additional details.

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

G P1/Cal. Code Regs., tit. 23, § 5002 - **Detailed Findings to Establish Consistency with the Delta Plan.**

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

a. G P1(b)(1)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(1) - **Coequal Goals**

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)** , the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

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

Yes, Inconsistent

Answer Justification:	See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 22, 23-25. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

b. G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) - **Best Available Science**

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see Appendix 1A, which is referenced in this regulatory policy.

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 14-21. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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DELTA PLAN CHAPTER 3

WR P1 / Cal. Code Regs., tit. 23, § 5003 - **Reduce Reliance on the Delta through Improved Regional Water Self-Reliance**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 4-8. WR P1 - Additional Exhibit - DCP_Economic Value Brochure_2024_Final.pdf, Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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DELTA PLAN CHAPTER 4

ER P1 / Cal. Code Regs., tit. 23, § 5005 - **Delta Flow Objectives**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 9-10. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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ER P2 / Cal. Code Regs., tit. 23, § 5006- **Restore Habitats at Appropriate Elevations**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 11. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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ER P3 / Cal. Code Regs., tit. 23, § 5007 - **Protect Opportunities to Restore Habitat**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 11. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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ER P4 / Cal. Code Regs., tit. 23, § 5008 - **Expand Floodplains and Riparian Habitats in Levee Projects**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3,

11. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

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ER P5 / Cal. Code Regs., tit. 23, § 5009 - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 11. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

DELTA PLAN CHAPTER 5

DP P2 / Cal. Code Regs., tit. 23, § 5011 - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

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

Yes, Inconsistent

Answer Justification: See Tribal and NGO Appeal of Certification of Consistency at pages 1-3, 12-13, 23-25. Tribal and NGO Appeal of DCP Consistency Determination - C20257.pdf

11/17/2025