



October 13, 2025

VIA EMAIL

To: Department of Water Resources

DCP_Consistency@water.ca.gov

Re: Public Draft Consistency Determination for Delta Conveyance Project

We write for San Francisco Baykeeper and Restore the Delta regarding the public draft consistency determination released by the Department of Water Resources (“DWR”) on October 3, 2025 for the Delta Conveyance Project (“DCP”) to provide two preliminary comments and requests before DWR’s submission of a consistency determination to the Delta Stewardship Council.

First, we seek additional information from DWR about how it was able to reach a consistency determination at this stage of the DCP. As DWR is aware, Baykeeper and Restore the Delta were two of the parties that obtained a preliminary injunction in litigation over the DCP under the Delta Reform Act in June of 2024. That ruling prohibited DWR from engaging in the geotechnical activities described in Chapter 3 of the Final Environmental Impact Report for the DCP. Subsequently, the Superior Court (a) declined to stay that ruling and (b) declined to modify it to allow for a more limited scope of geotechnical work to move forward on two separate occasions, and the Court of Appeal denied DWR’s request for a writ of supersedeas to stay the preliminary injunction while DWR’s appeal was pending. As of the time of this letter, that appeal remains pending, and the injunction remains in place.

During the litigation of the preliminary injunction, DWR contended that information from the geotechnical activities was necessary for DWR to determine whether the DCP was consistent with the Delta Plan under the Delta Reform Act. These contentions were made both in sworn declarations and in arguments to the Court by DWR’s attorneys. (*See, e.g.*, Bradner Declaration ¶ 12 [**“As explained below, the [geotechnical] data is also necessary to determine the DCP’s consistency with the Delta Reform Act of 2009, and for DWR’s application to the Delta Stewardship Council (DSC) for certification of consistency.”**] (emphasis added), *id.*, at ¶¶ 13, 15; Buckman Declaration ¶ 14; Marquez Declaration ¶¶ 7, 17; May 31, 2024 Hearing Tr. at 33:22-25 [“Q[uestion by the Court]: [Doesn’t DWR] already know enough with the full final certified EIR for DWR to prepare a certificate of consistency? A[nsWER by DWR’s counsel]: We do not.”], at 40:25-41:5 [“For example, the Delta Reform Act includes a requirement that the covered action be consistent with policies that are location dependent. If DWR cannot perform the geotechnical investigations, it won’t know where the facilities will be located, because [DWR] won’t know where they can be located...”], at 42:1-6, at 45:13-21 [“And as we’ve explained some of those [Delta Plan] policies are location dependent and DWR does not have the information right now, even though it has a whole bunch of other information in the EIR. Q[uestion (by the Court)]: You need to do the geotechnical investigative work?

A[nswer (by DWR’s counsel)]: In order to get the information necessary to certify the Delta Conveyance Project’s consistency.”] (emphasis added), at 52:16-53:4, and at 60:11-25.)¹

Given those statements we were surprised to learn that DWR had in fact proceeded with a finding of consistency given that the geotechnical work has not yet been performed. Based on our review of the Consistency Determination, DWR did not explain what information it was able to gather between the summer of 2024 and now that filled in for the information it could not obtain from the geotechnical work, nor why DWR’s prior determination that the information was needed is no longer correct.

We write during the 10-day public comment period, prior to DWR’s submission of a consistency determination to the Delta Stewardship Council, to ask that this shift be explained, that the information gathered be provided to the public, and that DWR include in its ultimate determination of consistency submitted to the Delta Stewardship Council a description of the information it obtained and / or the information it determined was no longer necessary so that the public and Council have a clear and complete record of DWR’s decision making process in this matter.

Second, we join the letter by the Counties of Sacramento, San Joaquin, Yolo, and Solano, the City of Stockton, the Sacramento County Water Agency, and the Sacramento Area Sewer District dated October 13, 2025, related to the timing of the consistency determination and the contents of the administrative record. Given the magnitude of the DCP, and the breadth of existing analysis of various iterations of the DCP available to DWR before it when it reached its determination of consistency with the Delta Reform Act and Delta Plan, it is important that the public and Delta Stewardship Council have all the relevant information to review DWR’s conclusions.

Respectfully submitted,

/s/ Eric J. Buescher

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San Francisco Baykeeper

/s/ Barbara Barrigan-Parrilla

Barbara Barrigan-Parrilla
Executive Director
Restore the Delta

cc:

Delta Stewardship Council engage@deltacouncil.ca.gov; coveredactions@deltacouncil.ca.gov
L. Elizabeth Sarine, California Deputy Attorney General (via email)

¹ Copies of the May 31 transcript and cited DWR declarations are attached to this letter. This citation is not meant to be an exhaustive list of statements where DWR made similar representations to the court, including statements made under oath, or to the public.