



North Delta CARES Action Committee

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December 18, 2018

SENT VIA EMAIL (CWFhearing@waterboards.ca.gov)

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
WaterFix Hearing Team
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Request for Official Notice and Joinder in Other Protestants' Filings Pertaining to the California Water Fix Project

Dear Hearing Officers and Hearing Team,

North Delta CARES Action Committee hereby joins in the December 17, 2018 letter from Friends of the River and the Sierra Club, "Re: Requests for Official Notice and for CEQA Compliance and Joinders in Other Filings Pertaining to the California Water Fix Project" as well as the letters filed on December 17, 2018 by South Delta Water Agency, Local Agencies of the North Delta et. al., and City of Stockton et al. North Delta CARES incorporates by reference the Protestants' requests and all documents and evidence filed in support thereof fully as if set forth herein. A statement of service is appended to this letter.

North Delta CARES also moves the Hearing Officers to take Official Notice of the October 16, 2018 letter from the Delta Protection Commission ("DPC") to the Delta Stewardship Council, "RE: Appeals of California WaterFix Certification of Consistency (Appeals C20185-A1 – A9)." As explained on page 1-2 of the DPC letter, the DPC comments on the CWF Consistency Determination are official comments and recommendations to the Delta Stewardship Council on the California WaterFix project ("CWF project") under section 29773 of the Public Resources Code. The letter is thus an official act of the Delta Protection Commission and are suitable for official notice under Title 23 of the California Code of Regulations, section 648.2.

The Delta Protection Commission letter specifically addresses the same disastrous impacts of the CWF project on North Delta communities:

the proposed CWF project is inconsistent with the Delta Plan policies and recommendations regarding “Delta as Place”. If carried out as proposed, CWF will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. We believe this represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must 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. (p. 8)

The DPC letter continues:

Our review of the record suggests that CWF does not “avoid or reduce conflicts . . . when feasible”, as required by DP P2. DWR’s supporting findings identify numerous impacts to Delta communities associated with the CWF project. Included among these impacts are disclosures of the impacts on community character of the CWF project’s construction activities, including declining property values, blight and abandonment. It is not hyperbole to suggest that the CWF project presents an existential crisis for the small Delta communities that would be most affected by the protracted, intensive construction period, the permanent infrastructure, and the radical – not evolutionary – effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. DWR has failed to grapple with the reality, demonstrated through evidence in the record, that CWF puts the long-term sustainability of small Delta communities in serious jeopardy; it also thoroughly fails to offer any meaningful mitigation for such impacts. (p. 6.)

These same disastrous impacts on the CWF project on Delta communities and Delta heritage tourism were the subject of many witnesses’ testimony for North Delta Cares in the Water Board’s hearing on the CWF project. Many witnesses also testified for the County of Sacramento, Save the California Delta Alliance, the County of San Joaquin, and Central and South Delta water agencies on the effects on Delta agriculture, Delta recreation, and Delta water quality.

Friends of the River and the Sierra Club state in their December 17, 2018 letter to the Water Board that “[t]he project must be consistent with the Delta Plan adopted by the Delta Stewardship Council (DSC) in order to proceed.” The WaterFix project is a covered action under Water Code section 85057.5. The Water Board’s issuance of a permit for the WaterFix also appears to fall within the definition of a covered action under Water Code section 85057.5.

Water Code section 85057.5 defines a “covered action” as a plan, program or project defined pursuant to Section 21065 of the Public Resources Code, and that meets (in part) the following criteria:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

Section 20185, subdivision c, of the Public Resources Code defines “project” as “an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” The Board’s issuance of a permit for the WaterFix therefore appears to fall within this definition of a “project.”

North Delta Cares therefore respectfully requests that the Board not issue an approval for the California WaterFix project until the Delta Stewardship Council has denied all appeals of a certification by DWR that the WaterFix project is consistent with the Delta plan.

Respectfully submitted,

/sg/ Barbara Daly, Co-Chair

North Delta Cares Action Committee

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation
(Petitioners)**

I hereby certify that on December 18, 2018 I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

**Re: Request for Official Notice and Joinder in Other Protestants' Filings
Pertaining to the California Water Fix Project**

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated October 30, 2018, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

I certify that the foregoing is true and correct and that this document was executed on December 18, 2018.

/sg/ Barbara Daly

Name: Barbara Daly

Title: Co-chair

Party/Affiliation: North Delta CARES Action Committee

Address: P.O. Box 255, Clarksburg, CA 95612

STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

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October 16, 2018 letter from the Delta Protection Commission to the Delta Stewardship Council

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/sg/ Barbara Daly

Name: Barbara Daly

Title: Co-chair

Party/Affiliation: North Delta CARES Action Committee

Address: P.O. Box 255, Clarksburg, CA 95612

DELTA PROTECTION COMMISSION

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John Laird

CA Natural Resources Agency

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CA State Lands Commission

Ex Officio Members**Honorable Susan Talamantes**

Eggman
California State Assembly

Honorable Cathleen Galgiani

California State Senate

October 16, 2018

Chair Randy Fiorini and Members
 Delta Stewardship Council
 980 Ninth Street, Suite 1500
 Sacramento, CA 95814

TRANSMITTED VIA EMAIL TO:
waterfixcert@deltacouncil.ca.gov
 Subject Line: WaterFix C20185

RE: Appeals of California WaterFix Certification of Consistency (Appeals C20185-A1 – A9)

Dear Chair Fiorini and Councilmembers,

The Delta Protection Commission (Commission), in its role representing Delta communities and advising the Delta Stewardship Council (Council) on protecting and enhancing the unique Delta values, provides the following comments on the California Water Fix (CWF, or proposed project) certification of Delta Plan consistency.

As the State agency charged with representing the Delta region, the Commission works to protect, maintain, enhance and enrich the overall quality of the Delta environment and economy. We do this with a focus on agriculture, recreation, heritage and natural resources, while remaining mindful of the importance of the Delta to all Californians. While the 15-member Commission is comprised largely of local agency representatives throughout the region, it also includes representatives of four State agencies. Please note that representatives of these State agencies do not necessarily endorse the Commission's comments and position relative to the CWF project.

The Delta Reform Act of 2009 articulated the State's basic goals for the Delta: to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem "in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place" (Public Resources Code (PRC) section 29702(a) and Water Code section 85054).

The Commission has a further critical role set forth in PRC 29773:

- (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including,

but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:

- (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.
- (2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
- (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.
- (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.

(b) The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.

We have commented extensively on the different iterations of the CWF project during the environmental review process, presenting our concerns to the project proponents on their adverse impact to Delta as Place values. We present here our recommendation to the Council pursuant to PRC section 29773, based on extensive review and consideration of the CWF.

As discussed below, the proposed CWF project is inconsistent with the Delta Plan policies and recommendations regarding “Delta as Place”. If carried out as proposed, CWF will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. We believe this represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must 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.

Standard of Review

The Commission understands the Council’s task in reviewing the appeals on the proposed Certification of Consistency is to determine whether the appellants have found any weakness in DWR’s detailed findings which they believe are supported by substantial evidence in the record.¹ DWR’s conclusions must be reasonable, in order to be afforded deference.² In our advisory capacity, Commission comments are focused on the following Delta Plan regulatory policies, as they relate to the Commission’s core policy areas of agriculture, recreation, and heritage, including legacy communities:

¹ References include the Consistency Record Document Code found in the Master Index on the Council website.

² (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 409 fn 12 [reviewing court need not defer to agency assertion if clearly inadequate or unsupported].)

- DP P1 (23 CCR section 5010), regarding location of new industrial development;
- DP P2 (23 CCR section 5010), regarding respecting local land use when siting water facilities;
and
- G P1 (23 CCR section 5002), regarding certification of consistency requirements.

We note that there may also be cross-cutting issues and we have attempted to identify where a specific issue pertains to more than one regulatory policy. We have limited our focus to Delta as Place policies, but this should not be taken to imply that we consider CWF to be consistent with other Delta Plan policies focused on water quality, supply or natural resource restoration or that we have made any judgement on the adequacy of the record which DWR consulted before making detailed findings.

The Commission includes with its submission certain additional documents that support our findings of the adverse effects from CWF on Delta as Place values or how the process to prepare the Certificate of Consistency shows a lack of consistency with Delta Plan policies. We request these documents be part of the record before the Council in support of the unique role given to the Commission in this proceeding. The Commission hereby formally requests that the documents referenced in and attached to this letter be added to the record under Section 10 of the Council's Administrative Procedures Governing Appeals. We provide a summary of these documents as Attachment A to this letter³, and are including a zipped file with Adobe PDF files of the documents. We will submit the Council's Request for Official Notice and/or Record Augmentation form for each submittal by October 22, 2018.

Using examples from evidence in the record and items the Commission has proposed for the record, we will show that the project as proposed has adverse effects on the Delta's unique cultural, recreational and agricultural values, inconsistent with statute (Water Code section 85020(b)). CWF would create significant impacts for Delta communities, fails to propose feasible actions to mitigate for those impacts in the Mitigation, Monitoring and Reporting Program (MMRP)⁴, and disregards options in public documents included in the record, such as the Commission's Economic Sustainability Plan (ESP)⁵, without any supporting justification.

Delta Plan Policy DP P1: Locate New Urban Development Wisely

CWF is not consistent with DP P1 because it introduces long-term⁶ industrial land uses to a rural landscape and these impacts contribute to blight⁷.

The record shows that the proposed concrete batch plant sites would introduce an industrial use to an otherwise rural landscape, would create long-term blight on the Delta as located, and during operation of the batch plants communities would have air quality, aesthetics, and noise impacts. The combined footprint of concrete batch plants under the proposed project would total approximately 119 acres (40

³ Attachment A - Delta Protection Commission Supplemental Documents for the Appeals of California WaterFix Certification of Consistency (Appeals C20185-A1 – A9) (per Section 10 of the Council's Administrative Procedures Governing Appeals)

⁴ Final_Mitigation_Monitoring_and_Reporting_Program, C_DRAFT 000002

⁵ Economic Sustainability Plan for the Sacramento-San Joaquin Delta D.8_DRAFT 002978, Attachment A-17, Commission Proposal to Council on ESP 2012, Attachment A-18, Council Reply to ESP 2012 (*citation corrected*)

⁶ Final EIR/EIS Chapter 15- Recreation p. 15-469, Line 27 D.1_DRAFT 000111

⁷ DP P2 Detailed Findings on Certification of Consistency, pp. 8-9 X.6_000002 (*Record Document Code added*)

acres in Contra Costa County, 40 acres in Sacramento County, and 39 acres in San Joaquin County).⁸ The Sacramento County batch plant would be located immediately north of Intake 2 across the river from Clarksburg, and the Contra Costa County batch plant would be located within 2 miles of Discovery Bay.

The specific question for the Council with respect to DP P1 is, does substantial evidence support DWR's contention that DP P1 is not applicable to the CWF project? DP P1 includes mandatory language dictating the siting of particular types of development, including industrial development that is a component of the CWF project. Under DP P1, such development "must be limited to" designated geographic areas and is only permitted outside such areas if the development is consistent with the land uses designated in county general plans as of May 16, 2013. DWR's detailed findings assert that because the CWF project "involves constructing new water conveyance facilities and does not involve new residential, commercial or industrial development," DP P1 is not applicable.⁹

DWR also presents an alternative argument that *if* the CWF project in fact is industrial development, the CWF project does not comply with DP P1; but full compliance would not be feasible.¹⁰ DWR also represents that it has complied with G P1¹¹ which provides specific requirements for an agency to demonstrate that a covered action that is inconsistent with a regulatory policy is nevertheless consistent with the Delta Plan as a whole. But DWR has failed to meet the specific requirements of G P1; namely, that it 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."¹²

Finally, DWR has presented no evidence in support of its contention that "because structures will be a government use" such structures would not be considered "industrial development." On the contrary, the record shows repeated examples of industrial CWF facilities being proposed in areas with agricultural and open space designated land use.¹³ DWR further argues for consistency with DP P1 by citing the Council's DP P1 Problem Statement that "the Council intends to foster a land use pattern that enhances the Delta's unique sense of place by protecting agriculture and the open, rural landscape while reducing risks to people and property."¹⁴

We believe that accepting DWR's Certification of Consistency with DP P1 would force the Council to betray that intent. Acceptance of the Certification would amount to concurring that the industrial elements of the project construction, including concrete batch plants in use for more than five years, are temporary and therefore somehow not subject to DP P1. The industrial elements of the project are not limited to the areas required by DP P1, and the impacts on Delta communities will be lasting and

⁸ DP_P2 Detailed Findings, Table 13-11, X.6_000002

⁹ Final_DP P1 (23 CCR Section 5010) Locate New Urban Development Wisely 7_27_18.pdf Detailed Findings, p. 2. X.6_000001 (*Record Document Code added*)

¹⁰ *Ibid.*, p. 2 fn. 1. (*citation corrected*)

¹¹ 23 CCR Section 5002, subd.(b)(1), Delta Stewardship Council Delta Plan 2013, Appendix B, p. 7 D.8_DRAFT 002981 (*citation corrected*)

¹² *Ibid.*

¹³ FEIR/EIS Table 13-11, p. 13-113, D.1_DRAFT 000103

¹⁴ Delta Plan 2013, p. 193, D.8_DRAFT 002981 (*citation corrected*)

severe. The record shows that DWR’s own environmental documents define “temporary” as longer than 2 years,¹⁵ contradicting the argument that the concrete batch plant industrial use is somehow temporary and, in any case, cannot be located anywhere else.

The Commission’s position is that CWF is not consistent with DP P1 since CWF proposes long-term industrial uses in agriculture and recreation land use designations, and that DWR has not adequately demonstrated or explained why consistency with DP P1 is infeasible, nor provided a sufficient justification of why CWF is nevertheless, on whole, consistent with the coequal goals. If these concrete batch plants cannot be placed in existing industrial-designated areas, the project proponents should consider other approaches through engagement with Delta agencies and local stakeholders.

Delta Plan Policy DP P2: Respect Local Land Use
Delta Plan Policy G P1: Mitigation Measures Equally or More Effective

DWR contends that CWF is consistent with DP P2; specifically, that the CWF project is “sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible¹⁶, considering comments from local agencies and the Delta Protection Commission.”

The Commission disagrees that substantial evidence in the record supports DWR’s contention that CWF is consistent with DP P2. DWR’s main evidence in support of DP P2 consistency seems to be that the predecessors and alternatives to the current project were worse for local land uses than the current project (such as having a larger footprint), and featured more problematic locations for certain infrastructure components.¹⁷ For example, DWR states:

“To minimize impacts on the environment and Delta communities, [CWF] is designed to utilize underground tunnels rather than surface canals, realign the tunnels and certain [RTM] stockpiling sites to prioritize use of public lands over private lands, reduce the size and location of the intermediate forebay, and reconfigured the three intakes to eliminate three pumping stations in the north Delta to a single pumping facility in the south Delta.”¹⁸

The Council’s task is to review this evidence and determine if DWR’s conclusion, based on the evidence in the record, is reasonable. The Commission’s position is that DWR’s conclusion is unsupported, for at least several main reasons.

¹⁵ Final EIR/EIS Chapter 15- Recreation p. 15-469, Line 27 D.1_DRAFT 000111

¹⁶ “Feasible” is defined in the Delta Plan as follows: “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (23 CCR § 5001.) This is the same as CEQA’s definition of “feasible.” (Pub. Res. Code, § 21061.1; see also CEQA Guidelines § 15364.) Therefore, the Council’s review of the Certification of Consistency and any assertion that particular aspects of the CWF project, or potential mitigation, is or is not “feasible” can be understood with reference to CEQA caselaw interpreting “feasible.” (See, e.g., *City of Marina v. Bd. of Trustees of California State Univ.* (2006) 39 Cal. 4th 341, 356-366 [rejecting state agency position that certain voluntary mitigation payments were “infeasible”].)

¹⁷ DP P2 Detailed Findings on Certification of Consistency, pp. 3-6; X.6_000002 (*Record Document Code added*)

¹⁸ *Ibid.*, p. 2

Our review of the record suggests that CWF does not “avoid or reduce conflicts . . . when feasible”, as required by DP P2. DWR’s supporting findings identify numerous impacts to Delta communities associated with the CWF project.¹⁹ Included among these impacts are disclosures of the impacts on community character of the CWF project’s construction activities, including declining property values, blight and abandonment.²⁰ It is not hyperbole to suggest that the CWF project presents an existential crisis for the small Delta communities that would be most affected by the protracted, intensive construction period, the permanent infrastructure, and the radical – not evolutionary – effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. DWR has failed to grapple with the reality, demonstrated through evidence in the record, that CWF puts the long-term sustainability of small Delta communities in serious jeopardy; it also thoroughly fails to offer any meaningful mitigation for such impacts.

This is not a new issue of concern to the Council, nor is it for the Commission. When first presented with the environmental analysis of socioeconomic impacts in 2013, Council staff’s comment letter raised concerns about changes to Community Character:

“The EIR/S states that ‘adverse social effects could also arise as a result of declining economic stability in communities closest to construction effects and those most heavily influenced by agricultural and recreation activities.’ Actions should be offered to reduce or mitigate adverse impacts in Chapter 16.”²¹

Of the numerous mitigation measures and “other commitments” DWR presents in the Consistency Certification, none are directed at supporting local communities as they address the impacts to their community character.²² Almost as an afterthought, there is a reference to a “Community Benefit Fund”²³ for which we have confirmed there is no detail or documentation elsewhere.²⁴ Notwithstanding the limited extent to which CEQA may require analysis of community character, DWR’s requirement to put forth substantial evidence in support of CWF’s consistency with DP P2 is a fundamentally different question than what CEQA requires. DWR did not adopt any mitigation measures that would meaningfully support the economic health and well-being of Delta communities. And DWR also failed to explain why it did not attempt to reduce conflicts with local land uses by adopting any such mitigation measures. DWR’s assertion that it has “avoid[ed] or reduce[d] conflicts . . . when feasible” is inadequate and unsupported on the record. The Commission’s position is that CWF is not consistent with DP P2 for this among many reasons, and provides some examples below.

¹⁹ DP P2 Detailed Findings on Certification of Consistency, pp. 6-15. X.6_000002 (*Record Document Code added*)

²⁰ *Ibid.*, pp. 8-9

²¹ Delta Stewardship Council to DWR, 7-11-2013, p. 22 Attachment A-9 (submitted to record - *citation corrected*)

²² DP P2 Detailed Findings on Certification of Consistency, pp. 15-22. X.6_000002 (*Record Document Code added*)

²³ *Ibid.*, pp. 21-22

²⁴ 10-11-18 email inquiry from the Commission (Erik Vink) to DWR (Greg Farley) and DWR’s 10-12-18 reply, Attachment A-19 (submitted to record - *citation corrected*)

Impacts to Cultural Landscape, Resources, and Legacy Communities: Cultural resources and legacy communities,²⁵ together with agriculture and recreation, embody the region’s cultural history, economic foundation, long-time human interaction with the natural environment, and visual character. The importance of the Delta to the United States’ cultural and historical context has been recognized by the National Park Service, which found that the Delta met the criteria for designation as a National Heritage Area,²⁶ which is a place where natural, cultural, and historic resources combine to form a cohesive, nationally important landscape. The CWF project possesses impacts that threaten to temporarily and permanently damage this nationally important landscape, the social fabric of communities, and the emerging heritage tourism industry.

The cultural resources mitigation measures, which currently focus on a limited set of properties or sites, should look at the cultural values of the Delta in a larger context, as suggested by the cultural landscape approach discussed in the Secretary of the Interior’s *Standards for the Treatment of Historic Properties* and *Guidelines for the Treatment of Cultural Landscapes*.²⁷ The proposed project could compromise portions of the area affected by the project and potentially disqualify them for consideration by the National Register of Historic Places as significant cultural landscapes. A cultural landscape contextual approach should be taken, given that the Commission and members of Congress are pursuing designation of the Delta as a National Heritage Area.²⁸

The CWF Final EIR/EIS²⁹ and Draft Supplemental EIR/EIS³⁰ identified mitigation for buildings and sites that are directly impacted by construction of the proposed project. The environmental documents detailed direct impacts for a number of structures, including single family properties, a bridge, and water infrastructure projects³¹ The mitigations outline development of built environment treatment plans and a vague assurance that project proponents will consult with relevant parties prior to demolition or ground-disturbing activities.³² DWR stipulated that “A BETP [Built Environment Treatment Plan] will be prepared by an architectural historian with demonstrated experience...Recommended property specific mitigation is identified in...Tables 18B-17 through 18B-31 and shall be implemented in accordance with the specifics developed in the BETP.”³³

Similar to temporary recreation impacts, DWR is not proposing mitigation for indirect impacts to cultural resources. The Final EIR/EIS and Draft Supplemental EIR/EIS provide a limited review of indirect impacts to other properties, despite the expansive scope of the project, including construction vehicle traffic, vibration, and dramatic changes to the visual character of the area. Only four locations are listed

²⁵ Legacy communities are identified in PRC Section 32301(f) and including the following communities along the Sacramento River: Clarksburg, Courtland, Freeport, Hood, Isleton, Locke, Rio Vista, Ryde, and Walnut Grove.

²⁶ National Park Service letter dated June 11, 2012, Attachment A-8 (submitted to record - citation added)

²⁷ Secretary of the Interior Guidelines, Attachments A-1, A-14 (submitted to record - citation added)

²⁸ Texts of legislation, Attachments A-4, A-5, A-6, A-12, A-13, NHA Feasibility Study Attachment A-7 (submitted to record - citation added)

²⁹ FEIR/EIS December 2016, D.1_DRAFT 000129 (Record Document Code added)

³⁰ Draft Supplemental EIR/EIS July 2018, S.2_ 0000036 (Record Document Code added)

³¹ FEIR/EIS, Table 18B-9, pp.18B-17-18B-18, D.1_DRAFT 000129 and Draft SEIR/EIS Table 18A-2, pp. 18A-1-18A-2, S.2_ 0000037 (Record Document Codes added)

³² FEIR/EIS Mitigation Measures CUL-5 and CUL-6 D.1_DRAFT 000129 (Record Document Code added)

³³ Ibid., pp. 18-142 to 18-143, D.1_DRAFT 000129 (Record Document Code added)

as “indirectly affected such as alterations of the historic view shed” in the analysis for the proposed project.³⁴

An example of this failure to properly assess and mitigate indirect impacts is Scribner Bend Vineyards near Clarksburg. Under the proposed project, Scribner Bend buildings will not be reviewed or monitored for possible impacts from vibration from vehicles during tunnel construction, but were evaluated in other alternatives.³⁵ Under the proposed project scenario, this location is expected to experience a five-fold traffic volume increase, from a range of 94-180 hourly volume to a 504-590 hourly volume range. Moreover, construction workers will likely avoid Interstate 5 and use local roads during morning and evening commute hours, causing even greater impacts during these times. The same holds true for historic houses along State Route 160 between the Walnut Grove Bridge and A Street in Isleton. Traffic volumes on this section of the road jump from a range of 173-465 hourly volume to 793-1,085.³⁶

As with many aspects of the proposed project’s impacts, DWR did not initiate dialogue with the Commission and local community organizations (such as the Locke Management Association³⁷) about potential mitigation for cultural resources impacts. This has resulted in a project that cannot legitimately be found to respect local land use as required by DP P2. Metaphorically, by focusing on the trees, the proposed project will compromise the integrity of the forest. Concluding that the project protects Delta as Place values by only completing documentation work on a handful of resources is inadequate. We recommend completion of this analysis with a thorough review of the indirect impacts to buildings and the cultural landscape.

Impacts to Recreation: Recreation is second only to agriculture in contributing to the Delta region economy. According to the ESP, visitors to the Delta region generated a total of 12 million visitor days of use annually in 2010 with a direct economic impact of more than \$250 million in spending, with most of this visitation in interior areas of the Delta that will be largely impacted by CWF.

CWF recreation mitigations are not consistent with G P1 because they are not equally or more effective than the mitigation measures included in the Delta Plan Program EIR.

The Delta Plan EIR Mitigation Measure (MM) 18-2 states that “If substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreation providers to direct displaced users to under-utilized recreational facilities.”

No mitigation has been proposed for the substantial “temporary” impacts to recreation in the Delta by the project proponents, other than creation of site-specific “construction traffic management plans” which are deferred to the future.³⁸ There is no analysis in the record of temporary impacts, although

³⁴ Ibid., p. 18-3, Table 18B-24, p. 18B-69, D.1_DRAFT 000129 (*Record Document Code added*)

³⁵ FEIR/EIS Appendix 18B, D.1_DRAFT 000129 (*Record Document Code added*)

³⁶ FEIR/EIS, Table 19-25, pp. 19-210, 19-217, D.1_DRAFT 000129 (*Record Document Code added*)

³⁷ Locke Management Association comment letter responses FEIR/EIS, D.1_DRAFT 000730 (*citation corrected*)

³⁸ Final_Mitigation_Monitoring_and_Reporting_Program MMRP for BDCP, 2016, Trans-1a, pages 2-87 to 2-90 C_DRAFT 000002

FEIR/EIS Chapter 15 defines “temporary” as longer than 2 years,³⁹ and construction could take from 5-10 years depending on location and facility. Regardless, this lack of analysis and associated mitigation or project modifications do not meet the standard set forth by the Council in the Delta Plan MM 18-2. Following are two examples:

Example 1: Barge Unloading Facility Conflicts in High-Use Waterways The proposed project is not consistent with the G P1 requirement to include applicable feasible mitigation measures of the Delta Plan’s Program EIR or provide equally or more effective alternative mitigation. A prime example of this are the large CWF barge unloading facilities on southern Bouldin Island⁴⁰ and the south end of Venice Island⁴¹ along boating routes from Tower Marina to Franks Tract. In addition, there is a barge unloading facility on Victoria Island⁴² approximately 1 mile east of Discovery Bay. The barge unloading facility on Victoria Island will restrict the ability of Discovery Bay boaters and anglers to travel south along Old River towards Clifton Court Forebay for a period of up to five years. As described in the Commission’s 2017 study on Recreational Boating, Discovery Bay was one of heaviest reported boat launch locations and one of the most heavily used sections of Delta waterway would pass just north of the Victoria Island barge site.⁴³

Barge facilities should be placed where they are the least disruptive to Delta waterways frequented by recreational boaters and anglers, not where they will cause significant and unavoidable impacts for 5 years. The CWF plans for “site specific” construction traffic management plans, including specific measures related to management of barges and stipulations to notify the commercial and leisure boating communities of proposed construction and barge operation in the waterways.⁴⁴ However, DWR’s own recreation specialist concluded such efforts “would not be able to completely mitigate the impacts on all the waterways. Thus, this temporary construction impact to recreation boating impact would be significant and unavoidable during construction.”⁴⁵

There were available sources in the record for developing feasible or alternative mitigation measures in consultation with the Commission and local Delta recreational boating interests and anglers. For example, the Commission’s ESP⁴⁶ identifies multiple strategies to avoid, minimize or mitigate recreation impacts. Furthermore, as the Commission pointed out in our comment letter on the EIR/EIS⁴⁷, CWF should ensure dedicated funds for construction of new recreation opportunities, as well as for protection of existing recreation opportunities as outlined in

³⁹ Final EIR/EIS Chapter 15- Recreation p. 15-469, Line 27 D.1_DRAFT 000111

⁴⁰ California WaterFIX Mapbook M03-4, Figure M3-4, Sheet 6, S.2_000009

⁴¹ Ibid, Sheet 7

⁴² Ibid, Sheet 10

⁴³ Recreational Boating Use of the Sacramento - San Joaquin Delta. Delta Protection Commission. 2017. Fig. 8, p. 25, Attachment A-15 (submitted to record - *citation corrected*)

⁴⁴ MMRP for CWF 2017, p. 2-88, lines 20 to 23, C_DRAFT 000002

⁴⁵ Doug Rischbieter, November 29, 2017 signed testimony, DSC Consistency Record Doc Code X.2_DRAFT 000027

⁴⁶ ESP, p. 282, op. cit. p.3

⁴⁷ Commission comment letter on RDEIR dated October 30, 2015 Attachment A-11 (submitted to record - *citation corrected*)

Recommendation DP R11 of the Delta Plan. Such mitigation would also be consistent with the State Water Project obligations under the Davis-Dolwig Act (Water Code section 11900 et seq.), which requires that State Water Project facilities be constructed in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs. A feasible plan developed in consultation with State Parks and funded by the project proponents or assured by a performance bond could result in meaningful mitigation which would reduce impacts to recreational opportunities in the Delta.

DWR proposes to only mitigate permanent impacts and has completely disregarded the indirect impacts created by re-directing displaced users (recreational boaters and anglers) to the locations that are unaffected by construction. They are also not reviewing the impacts to recreational vehicle resorts as requested by the Council⁴⁸. A lack of review of temporary impacts is contrary to Delta Plan EIR Mitigation Measure 18-2. The only effort to propose mitigation regarding these indirect impacts is to create a Traffic Management Plan notifying the boating community of the construction zone (MM Trans- 1a), and to contribute funds and perform some coordination actions as “Other Commitments.”⁴⁹

The record shows that project proponents failed to engage in dialogue with a single recreation facility owner or park manager in developing the FEIR Chapter 15 recreation analysis, the mitigation measure MM TRANS-1a, or Avoidance and Minimization Measure (AMM) 3B3.3.

The Commission’s ESP (Page 281) also includes the following Recommendation for Economic Sustainability of Recreation and Tourism:

- Protect and enhance private enterprise-based recreation with support from state and local public agencies. Most of the economic activity related to recreation is generated by private enterprise. Public agencies can provide catalyst settings, recreation facilities, and infrastructure to improve access, enhance and create settings for private development, and services.

The Commission has been unable to find any documentation in the record of consultation on the proposed mitigation with the Delta boating community. Such mitigation could reduce the Significant and Unavoidable (SU) impacts that construction will have on recreational boating in the Delta. We ask that this analysis be completed, or DWR provide evidence for the record that they actually engaged in dialogue with Delta recreation facility owners, park managers (including California State Parks), and the Commission, before the Council concludes that the project has protected Delta as Place values.

Example 2: Waterway Traffic Control Mitigation and Importance of Water-Based Access: Delta Plan EIR Mitigation Measure 19-1 specifies that a “waterway traffic control plan to ensure safe and efficient vessel navigation during construction in the waterways” should be prepared. At best, the CWF’s environmental documents often defer the creation of feasible and enforceable

⁴⁸ Delta Stewardship Council to DWR, 7-11-2013, p. 21, Attachment A-9 (submitted to record - *citation corrected*)

⁴⁹ Appendix 3B 3.2 and 3B 3.3, Environmental Commitments, AMMs and CMs, p. 3B-79, D.1_DRAFT 000023 (*citation corrected*)

mitigation to the preparation of subsequent plans, including construction traffic management plans. However, waterway traffic control plans are required to cover only commercial barge traffic to ports, not recreational boating traffic impacts.

The Commission has raised this concern in several instances, with DWR's response as follows:

“Waterways would remain navigable in the vicinity of all project construction. ... Because construction of water conveyance facilities would result in an increase in construction-related employment and labor income, this would be considered a beneficial effect.”⁵⁰

Within the record, there is insufficient evaluation of the waterway traffic impacts, let alone the socioeconomic impacts, of the many barge trips and the construction zones on the water-based recreation economy. The Delta Reform Act requires that construction of a new Delta water conveyance facility cannot proceed without funding for mitigation (Water Code Section 85089(a)). Accordingly, DWR's proposed mitigation measures ought to be clearly specified and their linkages to impacts of construction, operation, and maintenance of the facilities should be plainly identified. Open-ended pledges or vaguely described commitments to avoid or reduce adverse effects will not satisfy the charge of the law.

DWR's methodology used for characterizing effects from construction and operations in waterways is unduly narrow and therefore flawed:

“For the purposes of this analysis, a marine traffic disruption would occur if construction activities required modification to existing water channel, substantially interfered with port navigation, and/or substantially increased the volume of barge movement within the study area.”⁵¹;

This allows the analysis to disregard the unique impacts of construction zones on recreational boating, a significant part of the Delta economy.

Likewise, the methodology for determining emergency response impacts is unduly narrow. For the impact category “Interfere with emergency management and evacuation routes,” the methodology states:

“For the purposes of this analysis, an increase in the amount of trucks using the transportation system in the study area is defined as a potential interference with emergency services.”⁵²

This definition completely ignores potential impacts on water-based emergency response, including law enforcement and flood emergencies. The Delta Plan EIR MM 17-1 anticipated the need for emergency response routes for both land and water access.⁵³ While acknowledging

⁵⁰ Commission comment letter and responses, FEIR/EIS, D.1_DRAFT 000260, Letter 2581, p.122, D.1_DRAFT 000260 (*citation corrected*)

⁵¹ BDCP Final EIR, page 19-39, lines 26 to 29, D.1_DRAFT 000132 (*citation corrected*)

⁵² *Ibid.*, lines 23 to 25

⁵³ Delta Plan Mitigation and Monitoring Reporting Program (MMRP), page 23, (*citation corrected*) accessed at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf

that impacts to recreational boaters during 2 to 5 years of construction will be Significant and Unavoidable,⁵⁴ DWR is only proposing to implement site-specific traffic management for “Marine Traffic” and “Bicycle Routes” as part of a subsequent planning effort.⁵⁵

The Commission’s ESP stresses how important water-based recreation industry and services are to the Delta and summarizes what experiences boaters are seeking.⁵⁶ The Commission published an updated Boating Needs Assessment in September 2017.⁵⁷

The ability to access the Delta using both roads and waterways is crucial to the Delta economy. We should not defer the creation of subsequent plans to help with this, and we cannot ignore the importance of Delta waterways to the recreation economy and water-based emergency response.

Delta recreational boating values and water-based emergency response would be better protected by preparation of a waterway traffic management plan or plans, in consultation with marine law enforcement and local boating groups and marinas (pursuant to the Delta Plan EIR MM 19-1), to mitigate for the significant impacts of CWF barge traffic and construction zones. We also recommend that items listed in the Commission’s ESP should be used as a menu of potential mitigations to reduce these impacts to the greatest extent possible.

Impacts to Agriculture: Agriculture is the dominant land use and economic driver in the rural Delta region, with total crop value of approximately \$919 million in 2016. Combined with approximately \$82 million in animal products value, the total \$1 billion Delta agricultural economy has an economic impact of 12,407 jobs, \$999 million in value added and \$1.81 billion in output in the five Delta counties.⁵⁸

CWF mitigation does not provide equally or more effective protection than Delta Plan EIR mitigations⁵⁹. The Delta Plan EIR Mitigation Measure (MM) 7-1 states that a project that will result in permanent conversion of Farmland should preserve lands in perpetuity with a target ratio of 1:1.

The project as proposed would retain Significant and Unavoidable (SU) impacts on agriculture, including permanent and temporary conversion of Important Farmland and land under Williamson Act contracts. Chapter 14 of the CWF Supplemental EIR/EIS proposes the same four mitigation measures as found in the original Final EIR/EIS and in the BDCP EIR/EIS:

- 1) Develop an Agricultural Land Stewardship Plan
- 2) Promote Agricultural Productivity of Important Farmland
- 3) Minimize Impacts on Land Subject to Williamson Act Contracts
- 4) Consider an Optional Agricultural Land Stewardship Approach or Conventional Mitigation Approach

⁵⁴ Doug Rischbieter, November 29, 2017 signed testimony, X.2_DRAFT 000027 and FEIR/EIS Chapter 31, D.1_DRAFT 000176

⁵⁵ Draft SEIR-EIS, Chapt. 19, Impact Trans-4, p. 19-36, S.2_0000038 (*citation corrected*)

⁵⁶ ESP, p. 151 (Table 23) and pages 158-159 D.8_DRAFT 002978

⁵⁷ Recreational Boating Use op.cit., p. 9 (submitted to record - *citation corrected*)

⁵⁸ Unpublished data for agricultural section update of the ESP, August 2018

⁵⁹ Detailed Summary for Certificate of Consistency G P1(b)(2), X.6_000008 (*citation corrected*)

These are further described in the Final EIR's Appendix 14B⁶⁰ and in the 2017 MMRP⁶¹. In 2013, the Delta Stewardship Council encouraged DWR to "consider a combination of mitigation measures that are meaningful at both the regional and the farm level...The EIR/s [sic] discussion of Agricultural Land Stewardship Plans should describe how necessary actions and land conservation will be funded."⁶² The Council suggested specific measures that were considered feasible to mitigate agricultural impacts such as "supporting the Delta's agricultural economy" through using the Delta Investment Fund (authorized by the 2009 amendments to the Delta Protection Act in PRC 29778.5) to fund Delta Plan Recommendations DP R8 and DP R9 (encouraging value-added processing of Delta crops and supporting agritourism).⁶³ To date, we have been unable to find any indication these feasible mitigations have been specifically incorporated, or any explanation of why they have not been.

Instead, DWR proposes that the Council accept an alternative type of mitigation (MM AG-1c)⁶⁴ in which no mitigation ratios and no analysis is included. Within the analysis in the Final EIR/EIS of the short term and long term impacts to agriculture, DWR did consider a conventional farmland mitigation program with 1:1 ratios, consistent with the Delta Plan mitigations measures, yet dismissed it with the statement that it "may not be feasible because of cost or availability of land."⁶⁵ This type of dismissive conclusion is unacceptable and shows little regard for either the Delta Plan or the Delta agricultural community.

The foundation of the Delta's agricultural economy is its productive farmland. It is a non-renewable resource, and too vital to defer defining how CWF might impact it and whether additional project modifications might be needed to minimize farmland impacts. The project proponent did not document in the record that they engaged in dialogue with individual agricultural operators or with local Farm Bureaus or agricultural associations when completing the analysis and mitigations in Chapter 14 or Appendix 14B – a failure consistently noted in other Delta as Place issue areas.

DWR acknowledges they should "consider whether it makes sense to limit the percentage of agricultural land use change in a specific area."⁶⁶ and we wholeheartedly agree. Such an analysis will illuminate further project modifications, especially as it relates to Reusable Tunnel Material (RTM) spoils and forebays. Before a Council vote on consistency with the Delta Plan, and specifically Policy DP P2, we recommend this analysis be completed, and include dialogue between and among the project proponents, Delta farmers, Delta County Farm Bureau staff, California Department of Food and Agriculture, University of California Cooperative Extension, and other agricultural interests and experts.

⁶⁰ FEIR Appendix 14B, D.1_DRAFT 000110

⁶¹ CWF MMRP, Section 2.7, p. 2-41 C_DRAFT 000002

⁶² Delta Stewardship Council to DWR, 7-11-2013, p. 22 - Attachment A-9 (submitted to record - *citation corrected*)

⁶³ *Ibid.*, p.20

⁶⁴ FEIR Appendix 14B, D.1_DRAFT 000110

⁶⁵ *Ibid.*, p. 14B-13, lines 16 to 31 (*citation corrected*)

⁶⁶ *Ibid.*, p. 14B-17, lines 18 to 20 (*citation corrected*)

Community Engagement and Consultation on Land Uses

Despite DWR's Certification of Consistency insistence that the mitigation measures in the Final EIR/EIS adequately alleviate many of the concerns with DP P2, the Final EIR/EIS does not fully address the proposed project's socioeconomic impacts because they are not considered impacts under CEQA.⁶⁷ Increased traffic volumes, noise, nighttime light and glare, declining property values, building abandonment, and substantial alteration of the Delta's visual character will have substantial impacts on the economics and quality of life of legacy communities, particularly those closest to the construction and related impacts. The Certification of Consistency should pursue measures beyond the bounds of CEQA to address the larger socioeconomic impacts of the project.

Project proponents should consider measures that reduce economic blight, such as investing in public facilities and infrastructure through the Delta Investment Fund (PRC section 29778.5), funding implementation of the Commission's Delta Community Action Planning project (the Commission has prepared community action plans in Clarksburg, Courtland, Hood, and Walnut Grove and is currently preparing a plan in Isleton to promote physical and quality of life improvements in legacy communities), and supporting agricultural, cultural, recreational, and tourism programs and projects through the newly created Delta Regional Foundation. The Commission's ESP provides detail on strategies that DWR can use to mitigate built environment impacts.⁶⁸

The Commission has previously advocated for⁶⁹ and continues to recommend that DWR implement a "Delta Compensation Fund", funded by the project proponent and administered by an impartial and independent third party. The Fund would be designed to address damages created by CWF construction. The administrator of the Delta Compensation Fund would act quickly to assess claims of damage caused by CWF construction and make payments directly to affected parties. This would avoid a lengthy and drawn-out public agency claim process that would be especially challenging for many in the Delta's socioeconomically-challenged rural communities most affected by CWF construction.

DWR contends that other public agencies are responsible for Delta land uses, not DWR.⁷⁰ This argument does not carry DWR very far, given that the posture of the consistency review is on DWR's contention that the CWF project is "sited to avoid or reduce conflicts with existing uses . . . when feasible . . ." In the context of a project that will have significant and unavoidable impacts on Delta communities, DWR cannot shift focus to other agencies while feasible mitigation measures are in its control and it has declined to pursue them.⁷¹ Indeed, based on evidence in the record, the Commission fails to see any future prospect that DWR will "follow a local agency's policies where DWR determines such policies to be appropriate and feasible," as stated in Appendix 3B.⁷² In fact, the record shows a steady erosion in the level of effort at coordinating with local governments, the Delta Protection

⁶⁷ Certification of Consistency, DP P2, p. 9 op.cit. p.3 (*citation corrected*)

⁶⁸ ESP, Chapter 10, op.cit. p.3

⁶⁹ Commission Letter on BDCP EIR/EIS, 2014, p. 7 - Attachment A-10 (submitted to record - *citation corrected*)

⁷⁰ Certification of Consistency, DP P2, p. 3. op.cit. p.3

⁷¹ *City of Marina v. Bd. of Trustees of California State Univ.* (2006) 39 Cal. 4th 341, 356-366

⁷² Appendix 3B, Environmental Commitments, AMMs and CMs, p. 3B-3, lines 19 to 24, D.2_DRAFT 000095

Commission, and other public agencies on this massive project, as evidenced by an example of discussions with then-BDCP coordinator Karla Nemeth (next paragraph).

Community Input on Early Design is Lacking in the Record: DWR has presented the many public meetings and comment letters as evidence in the record demonstrating “respect [for] local land use.” This may meet the CEQA standard for public participation, but it does not meet the Delta Plan standard. The component of public dialogue that is missing was lost several years ago, when there were still discussions about BDCP having a stakeholder group. For example, Sacramento County wrote to DWR in October 2008 about the proposed Implementing Structure/Governance and offered their support for stakeholder involvement.⁷³ Subsequently in 2009, residents in Clarksburg met with then-Secretary of Natural Resources Lester Snow and then-BDCP-coordinator Karla Nemeth, who committed to meaningful work with Farm Bureaus and Delta Counties.⁷⁴ When the BDCP Draft EIR/EIS Chapters were made available for review in November 2013, Chapter 7 (Implementation Structure)⁷⁵ included Section 7.2.8 “Coordinating with Local Governments, Delta Protection Commission, and Other Public Agencies.” A “Stakeholder Council” was proposed⁷⁶ whereby local agencies were encouraged to join.

With release of the Recirculated Draft EIR/EIS in 2015, Chapter 7 had disappeared, and there has been no equivalent in any further iteration of the CWF environmental documents. There is extensive documentation of public comments at public outreach meetings, but there has been no role for direct Delta community or local agency engagement. Today, governance of design decisions is vested in a Joint Power Authority without Delta local agency participation.

In general, the record is replete with evidence of DWR’s consideration of comments from certain agencies, while lacking evidence of DWR’s consideration of comments from local agencies. The Commission offers two examples in which DWR has disregarded the comments of local agencies, while affording a far greater degree of consideration to regulatory agencies and subject matter experts (SMEs) on siting and design of facilities, and avoiding and mitigating impacts resulting from construction and operations.

Infrastructure Siting and Design Lacks Community Dialogue as Part of Record: In the record supporting DWR’s Certification of Consistency with DP P2, two reports provide chronological documentation of how both the intake locations⁷⁷ and the intermediate forebay locations⁷⁸ were brainstormed, refined, and selected for design starting in 2008.

In January 2009, lead-agency staff held meetings and consulted Geographic Information System (GIS) data layers to inform intake location selection, including layers identifying land use and parcel

⁷³ http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Sacramento_County_-_Governance_Principles_10-28-08.sflb.ashx, p. 2, bullet 2 – Attachment A-2 (submitted to record – *citation corrected*)

⁷⁴ http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Clarksburg_Scoping_Transcript.sflb.ashx, transcript, page 12. – Attachment A-3 (submitted to record – *citation corrected*)

⁷⁵ BDCP_Ch07-ImpStructure_Web.pdf D.4_DRAFT 000037

⁷⁶ *Ibid.*, Section 7.1.10

⁷⁷ FEIR/EIS, Appendix 3F: Intake Location Analysis, X.3_000007

⁷⁸ FEIR/EIS, Appendix 3H: Intermediate Forebay Location Analysis, X.3_000008

sizes.⁷⁹ Based on this GIS evaluation of all seventeen potential intake sites, an intake report identified two preferred combinations of five intake locations. At this point, in June 2011, DWR reconvened the Fish Facilities Technical Team (FFTT) for input. Subsequently, at the June 20, 2012, BDCP public meeting, it was announced that the proposed project would consist of three 3,000 cubic feet per second (cfs) diversion intakes (or a total of 9,000 cfs) along the eastern bank of the Sacramento River.

Further, an intermediate forebay report describes the process to select Granville Tract as the location for the forebay. The selection team used four engineering screening criteria, plus an undefined “minimizing environmental impacts” screen.⁸⁰ These five criteria and the design parameters for the tunnels were the sole criteria used in selecting locations near Hood and Glanville Tract for the intermediate forebay. In 2009, DWR and BOR staff then held discussions with representatives from nearby Stone Lakes National Wildlife Refuge (NWR), eliminating two locations based on “soil conditions, distance from the proposed intakes and footprint impacts.”⁸¹ The chronological description of the forebay selection group’s deliberations is full of references to the town of Hood, and there is an undocumented reference to “meetings with Hood area landowners” cited (page 3H-5) but the forebay report references lack documentation of a single communication with the Hood community or County of Sacramento staff that detailed any dialogue about the options, and Glanville Tract was ultimately selected in 2012.

Throughout both these documents there is a noteworthy lack of consultation with local land use agencies, or documentation of discussions among lead-agency staff and consultants with the express purpose of designing the intake and forebay locations to minimize impacts on the communities of Hood, Clarksburg and Courtland. Attempting land use conflict resolution was clearly feasible, because DWR conferred directly with Stone Lakes NWR and modified the project options accordingly, although impacts remain. Employing GIS analysis of land use is a tool to support, not supplant, actual meetings and dialogue with local planning, community development and building departments and can hardly be considered evidence of “respect for local land use.” DWR’s meetings with the FFTT on the intakes, including making a “formal charge” for what they must accomplish, at least indicates a level of effort to consult with subject matter experts. The same respect was not afforded to local agencies. The types of dialogue that are critical to ensuring “Delta as Place” is protected are clearly missing in the record.

Conclusion

The Commission acknowledges the tremendous weight of responsibility this appeal carries for the Council. The Delta Reform Act in 2009 was enacted less than ten years ago, and the Council’s challenge in accomplishing its mandates in a relatively few years has been great. Yet this decision may be the most significant the Council ever makes. It is unfortunate that this is the first appeal the council has had to consider, with no precedent before it. This action will set the precedent. It represents the

⁷⁹ FEIR/EIS, Appendix 3F: Intake Location Analysis, page 3F-4. X.3_000007

⁸⁰ FEIR/EIS Appendix 3H: Intermediate Forebay Location Analysis, p. 3H-2, line 7. X.3_000008

⁸¹ Ibid., p. 3H-2, lines 11 and 12

Council's opportunity to protect and enhance the most essential qualities of the very place that gives the Council its name – the Delta. To quote the Delta Plan:

“If the Delta’s unique cultural, recreational, and agricultural values are not recognized, they are unlikely to be protected and enhanced.”

To inform your decision, we have provided numerous instances where the record shows the project as currently proposed is not consistent with the Delta Plan charge to protect the Delta as a unique, evolving Place and would irrevocably alter the defining characteristics of the Delta, rendering the Delta as Place policies meaningless and the recommendations pointless. We strongly recommend, pursuant to PRC section 29773, that the Council remand the project until the proponents can demonstrate that these Delta as Place inconsistencies have been greatly reduced or eliminated. DWR will be able to take the opportunity afforded by a remand to meaningfully engage with local communities to determine ways in which it might best support Delta as Place policies.

Sincerely,



Erik Vink
Executive Director

Attachment A - Delta Protection Commission Documents for the Appeals of California WaterFix Certification of Consistency (Appeals C20185-A1 – A9)

cc: Member, Delta Protection Commission

Attachment A - Delta Protection Commission Documents for the Appeals of California WaterFix Certification of Consistency (Appeals C20185-A1 – A9) Letter Dated October 16, 2018 (per Section 10 of the Council’s Administrative Procedures Governing Appeals)

No.	Year	Proposed Short Title	Hyperlink
1	1996	SIS Guidelines for Treatment of Cultural Landscapes	
2	2008	Letter of Sacramento County;10/28/08; topic of “Implementing Structure/Governance”	http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Sacramento_County_-_Governance_Principles_10-28-08.sflb.ashx
3	2009	Transcript of Public Comment Meeting March 26, 2009 in Clarksburg	http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Clarksburg_Scoping_Transcript.sflb.ashx
4	2010	HR 6329 To establish the Sacramento-San Joaquin Delta National Heritage Area	
5	2010	S. 3927 To establish the Sacramento-San Joaquin Delta National Heritage Area	
6	2011	S. 29 To establish the Sacramento-San Joaquin Delta National Heritage Area	
7	2012	Feasibility Study for a National Heritage Area	http://delta.ca.gov/wp-content/uploads/2016/10/Delta_NHA_Study.pdf
8	2012	Letter of National Park Service; 6/11/12; topic of “Feasibility Study”	http://delta.ca.gov/wp-content/uploads/2016/10/Delta_Study_NPS_6.11.12.pdf
9	2013	Letter of Delta Stewardship Council; 7/11/13; topic of “Responsible Agency Comments 2013 Administrative Draft”	http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Delta_Stewardship_Council_letter_7_11_13.sflb.ashx
10	2014	Letter of Delta Protection Commission 07/24/14, topic of “Bay Delta Conservation Plan EIR / EIS”	http://delta.ca.gov/wp-content/uploads/2016/10/BDCP_Comment_Letter_7-24-14.pdf
11	2015	Letter of Delta Protection Commission; 10/30/15; topic of “Recirculated Draft EIR”	http://delta.ca.gov/files/2016/10/WaterFix_Comment_Letter_10_30_2015.pdf
12	2017	HR 1738 To establish the Sacramento-San Joaquin Delta National Heritage Area	
13	2017	S. 731To establish the Sacramento-San Joaquin Delta National Heritage Area	
14	2017	Secretary’s Guidelines for Treatment of Properties	https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf
15	2017	Recreational Boating Use of the Sacramento-San Joaquin Delta by CSU Sacramento, 2017	http://delta.ca.gov/wp-content/uploads/2016/10/RecBoatingStudy_2017_-Final.pdf

No.	Year	Proposed Short Title	Hyperlink
16	2017	2015 Inventory of Recreational Facilities	http://delta.ca.gov/wp-content/uploads/2016/10/RecBoatingStudy_2017_-Final.pdf
17*	2012	Proposal of Delta Protection Commission; 01/26/12 as presented at Council Meeting held February 9-10, 2012	http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_7a_Attach_1_DPC%20Proposal%20to%20DSC_2012%2001%2026.pdf
18*	2012	Reply of Council to Commission on Proposal to Protect the Delta as Evolving Place; 08/07/12	None
19*	2017	10-11-18 email inquiry from the Commission (Erik Vink) to DWR (Greg Farley) and DWR's 10-12-18 reply	None

*Reference items submitted for the record, to support corrected footnotes in letter submitted on October 19, 2018 from DPC Staff