

1 Thomas H. Keeling (SBN 114979)  
2 FREEMAN FIRM  
3 1818 Grand Canal Boulevard, Suite 4  
4 Stockton, California 95207  
5 Telephone: (209) 474-1818  
6 Facsimile: (209) 474-1245  
7 Email: [tkeeling@freemanfirm.com](mailto:tkeeling@freemanfirm.com)

8 *Attorney for Petitioners/Plaintiffs County of San Joaquin,*  
9 *County of Contra Costa, Contra Costa County Water Agency,*  
10 *County of Solano, County of Yolo and Central Delta Water*  
11 *Agency*

12 [ADDITIONAL COUNSEL LISTED ON FOLLOWING  
13 PAGE]

14 **EXEMPT FROM FILING FEES**  
15 **PURSUANT TO GOV. CODE, § 6103**

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SACRAMENTO

18 COUNTY OF SAN JOAQUIN, COUNTY  
19 OF CONTRA COSTA, CONTRA COSTA  
20 COUNTY WATER AGENCY, COUNTY  
21 OF SOLANO, COUNTY OF YOLO,  
22 CENTRAL DELTA WATER AGENCY, and  
23 LOCAL AGENCIES OF THE NORTH  
24 DELTA,

25 Plaintiffs,

26 v.

27 CALIFORNIA DEPARTMENT OF  
28 WATER RESOURCES and DOES 1-50,  
inclusive,

Defendants;

DOES 51-100,

Real Parties in Interest.

**CASE NO.: 24WM000010**

(Related to 24WM000006; 24WM000008;  
24WM000009; 24WM000011;  
24WM000012; 24WM000014;  
24WM000017; 24WM000062)

[Assigned to Hon. Stephen P. Acquisto  
Department 36]

**CEQA CASE**

**COUNTY OF SAN JOAQUIN, ET AL.'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

**HRG DATE: MAY 31, 2024**  
**TIME: 1:30 p.m.**  
**DEPT: 36**

Action Filed: January 22, 2024

1 Osha R. Meserve (SBN 204240)  
Patrick M. Soluri (SBN 210036)  
2 SOLURI MESERVE, A LAW CORPORATION  
510 8th Street, Sacramento, California 95814  
3 Telephone: (916) 455-7300; facsimile: (916) 244-7300  
4 Emails: [osha@semlawyers.com](mailto:osha@semlawyers.com); [patrick@semlawyers.com](mailto:patrick@semlawyers.com)

*Attorneys for Petitioners/Plaintiffs County of San Joaquin,  
5 County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of  
6 Yolo, Central Delta Water Agency, and Local Agencies of the North Delta*

7 Roger B. Moore (SBN 159992)  
LAW OFFICE OF ROGER B. MOORE  
8 337 17th Street, Suite 211  
Oakland, California 94612  
9 Telephone: (510) 548-1401  
10 Email: [rbm@landwater.com](mailto:rbm@landwater.com)

*Attorney for Petitioners/Plaintiffs County of San Joaquin,  
11 County of Contra Costa, Contra Costa County Water Agency,  
12 County of Solano, County of Yolo and Central Delta Water Agency*

13 Edward James Kiernan (SBN 189243)  
County Counsel  
14 Kirnpreet Kaur Virk (SBN 221369)  
Deputy County Counsel  
15 Office of the County Counsel  
COUNTY OF SAN JOAQUIN  
16 44 N San Joaquin Street, Suite 679, Stockton, California 95202  
Telephone: (209) 468-2980; facsimile: (209) 468-0315  
17 Emails: [ekiernan@sjgov.org](mailto:ekiernan@sjgov.org); [kvirk@sjgov.org](mailto:kvirk@sjgov.org)

*Attorneys for Petitioner/Plaintiff County of San Joaquin*

18 Thomas L. Geiger (SBN 199729)  
County Counsel  
19 Stephen M. Siptroth (SBN 252792)  
Assistant County Counsel  
20 CONTRA COSTA COUNTY  
21 1025 Escobar Street, 3rd Floor, Martinez, California 94553  
Telephone: (925) 655-2200; facsimile: (925) 655-2263  
22 Emails: [stephen.siptroth@cc.cccounty.us](mailto:stephen.siptroth@cc.cccounty.us); [thomas.geiger@cc.cccounty.us](mailto:thomas.geiger@cc.cccounty.us)

*Attorneys for Petitioner/Plaintiff County of Contra Costa, and  
23 Contra Costa County Water Agency*  
24  
25  
26  
27  
28

1 Bernadette Curry (SBN 197203)  
County Counsel  
2 Holly E. Tokar (SBN 334288)  
Deputy County Counsel  
3 SOLANO COUNTY  
675 Texas Street, Suite 6600, Fairfield, California 94533  
4 Telephone: (707) 784-6140; facsimile: (707) 784-6862  
Emails: [BSCurry@SolanoCounty.com](mailto:BSCurry@SolanoCounty.com); [HETokar@SolanoCounty.com](mailto:HETokar@SolanoCounty.com)

5  
6 *Attorneys for Petitioner/Plaintiff County of Solano*

7 Philip J. Pogledich (SBN 197110)  
County Counsel  
8 Eric May (SBN 245770)  
Senior Deputy County Counsel  
9 COUNTY OF YOLO  
625 Court Street, Room 201, Woodland, California 95695  
10 Telephone: (530) 666-8172; facsimile: (530) 666-8279  
Emails: [philip.pogledich@yolocounty.org](mailto:philip.pogledich@yolocounty.org); [eric.may@yolocounty.org](mailto:eric.may@yolocounty.org)

11  
12 *Attorneys for Petitioner/Plaintiff County of Yolo*

13 Dante John Nomellini (SBN 040992)  
Dante John Nomellini, Jr. (SBN 186072)  
NOMELLINI, GRILLI & McDANIEL LAW OFFICE  
14 235 East Weber Avenue, Stockton, California 95202  
Telephone: (209) 465-5883; facsimile: (209) 465-3956  
15 Emails: [ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); [dantejr@pacbell.net](mailto:dantejr@pacbell.net)

16 *Attorneys for Petitioner/Plaintiff Central Delta Water Agency*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Table of Contents**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MEMORANDUM OF POINTS AND AUTHORITIES.....6

I. INTRODUCTION .....6

II. LEGAL BACKGROUND .....7

A. The Legislature’s Concerns About the Delta .....7

B. The Council and the Delta Plan.....8

C. The Mandated Certification of Consistency Process .....9

III. FACTUAL AND PROCEDURAL BACKGROUND .....12

IV. PRELIMINARY INJUNCTION STANDARD OF REVIEW .....13

V. ARGUMENT .....14

VI. CONCLUSION.....15

1 **Table of Authorities**

2 **Cases**

3 *Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014 ..... 6, 7-10

4 *Nutro Products, Inv. v. Cole Grain Co.* (1992) 3 Cal.App.4th 860 ..... 13-14

5 *The Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 336 .... 14

6 *Tulare Lake Canal Co. v. Stratford Public Utility Dist.* (2023) 92 Cal.App.5th 380 ..... 14

7 **Statutes**

8 **Cal. Code Regs., title 23, section**

8 5001, subd. (j)(1)(A)-(E) ..... 10

9 5002, subd. (a) ..... 11

10 5034 ..... 6, 12

11 **Code of Civil Procedure, section**

11 526 ..... 12

12 **Public Resources Code, section**

13 21065 ..... 9, 10

14 29101 ..... 6

15 **Water Code, section**

16 12220 ..... 6

17 85000 ..... 6

18 85001, subd. (a) ..... 8

19 85001, subd. (c) ..... 8

20 85022, subd. (a) ..... 9

21 85022, subd. (c)(2)-(3) ..... 8

22 85054 ..... 8

23 85057.5 ..... 9

24 85058 ..... 6

25 85059 ..... 8

26 85200, subd. (a) ..... 8

27 85210, subd. (i) ..... 10

28 85225 ..... 6, 7, 11, 13

85225.10, subd. (a) ..... 11

85225.15 ..... 11

85225.20 ..... 11

85225.25 ..... 11

85300, subd. (a) ..... 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Concerned about the state and health of the Sacramento-San Joaquin River Delta  
4 (Delta),<sup>1</sup> the Legislature adopted the Sacramento-San Joaquin Delta Reform Act of 2009  
5 (Water Code § 85000 et seq.) (“Act”) directing the Delta Stewardship Council (Council) to  
6 adopt and implement a Delta Plan—a legally enforceable, comprehensive, long-term  
7 management plan for the Delta that among other objectives, furthers coequal goals to (1)  
8 secure a reliable water supply for California and (2) protect, restore, and enhance the Delta  
9 ecosystem and the fish, wildlife, and recreation it supports. (*Delta Stewardship Council*  
10 *Cases* (2020) 48 Cal.App.5th 1014, 1028.) Pursuant to this legislative mandate, the Council  
11 adopted the Delta Plan in 2013. (*Id.* at p. 1041.)

12 Under the Act, “state and local land use actions that qualify as covered actions must  
13 be consistent with the Delta Plan.” (*Delta Stewardship Council Cases, supra*, 48  
14 Cal.App.5th at p. 1044.)

15 The Act requires any state or local public agency that proposes to undertake a  
16 covered action to prepare a written certification of consistency *prior to initiating*  
17 *the implementation of that covered action*, with detailed findings as to whether  
18 the covered action is consistent with the Delta Plan, and then to submit that  
certification to the Council.

19 (*Ibid.*, citing Wat. Code, § 85225, emphasis added.) The filing of the certification of  
20 consistency triggers the right of any person to appeal the consistency determination. (*Delta*  
21 *Stewardship Council Cases, supra*, 48 Cal.App.5th at p. 1044.) During the pendency of any  
22 such appeal, the covered action “shall not be implemented” unless certain conditions have  
23 been met. (Cal. Code Regs., tit. 23, § 5034.)

24 Petitioners and Plaintiffs County of San Joaquin, County of Solano, County of Yolo,  
25 County of Contra Costa, Contra Costa Water Agency, Central Delta Water Agency, and Local  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The “legal” Delta is defined in section 12220; however, the definition of “Delta” in the Act includes  
the definition in section 12220 “and the Suisun Marsh, as defined in Section 29101 of the Public  
Resources Code.” (Wat. Code, § 85058.)

1 Agencies of the North Delta (collectively “Petitioners”) bring this Motion for Preliminary  
2 Injunctive Relief (“Motion”) against the California Department of Water Resources (“DWR”)  
3 to enjoin the planned geotechnical and other Project-related activities that DWR began to  
4 undertake in May, 2024, pursuant to the certified Delta Conveyance Project (“DCP” or  
5 “Project”) final environmental impact report (“FEIR”). These activities are, as expressly  
6 acknowledged by DWR in the DCP FEIR, an inextricable part of the Project. As also  
7 expressly acknowledged by DWR, the Project (including the geotechnical and other  
8 investigatory activities) is a “covered action” within the meaning of the Act. DWR has not,  
9 however, filed the required written certification of consistency with the Council prior to  
10 initiating implementation of the Project. Based on these indisputable facts and the harm  
11 arising from DWR’s actions, Petitioners seek a preliminary injunction to enjoin DWR from  
12 initiating implementation of the Project until DWR files a certification of consistency with the  
13 Council in compliance with Water Code<sup>2</sup> section 85225 (“Section 85225”).

## 14 **II. LEGAL BACKGROUND**

15 To frame the factual and procedural background and the arguments in support of the  
16 Motion, Petitioners first outline the legal framework under the Act.

### 17 **A. The Legislature’s Concerns About the Delta**

18 The Delta “is the most valuable estuary and wetland ecosystem on the west coast of  
19 North and South America, and is the hub of California’s water delivery system.” (*Delta*  
20 *Stewardship Council Cases, supra*, 48 Cal.App.5th at p. 1027.) The Delta “is endowed with  
21 many invaluable and unique resources of major statewide significance, including highly  
22 productive agriculture, recreational assets, fisheries, and wildlife environment. [Citation.] In  
23 addition, the economies of major regions of the state depend on the ability to use water within  
24 the Delta watershed or to import water from the Delta watershed. More than two-thirds of  
25 California residents and more than two million acres of highly productive farmland receive  
26 water exported from the Delta watershed. [Citation.] Water diverted from  
27

28 \_\_\_\_\_  
<sup>2</sup> All further undesignated section references are to the Water Code unless otherwise specified.

1 the Delta watershed has made the Central Valley the fruit basket and salad bowl of the nation.  
2 Unfortunately, the Delta is not doing so well. After years of slow decline, the Delta’s watery  
3 ecosystem has gone critical.” (*Ibid.*)

4 “In 2009, after decades of conflict and unsuccessful efforts to comprehensively address  
5 the many problems and challenges facing the Delta, the Legislature found and declared that the  
6 ‘Delta watershed and California’s water infrastructure are in crisis and existing Delta policies  
7 are not sustainable,’ and that ‘[r]esolving the crisis requires fundamental reorganization of the  
8 state’s management of Delta watershed resources.’” (*Delta Stewardship Council Cases*,  
9 *supra*, 48 Cal.App.5th at pp. 1027-1028 [quoting § 85001, subd. (a)].)

10 Responding to this crisis, the Legislature enacted the Act, finding, among other things,  
11 that “[t]he permanent protection of the Delta’s natural and scenic resources is the paramount  
12 concern to present and future residents of the state and nation” and “[t]o promote the public  
13 safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and  
14 the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and  
15 prevent its further deterioration and destruction.” (§ 85022, subd. (c)(2)-(3).) The Legislature  
16 further found that “[e]xisting developed uses, and future developments that are carefully  
17 planned and developed consistent with the policies of this division, are essential to the  
18 economic and social well-being of the people of this state and especially to persons living and  
19 working in the Delta.” (*Id.* at subd. (c)(4).)

## 20 **B. The Council and the Delta Plan**

21 As part of the Act, the Legislature created the Council as an independent agency of the  
22 state (§ 85200, subd. (a)) and charged it with adopting and implementing the Delta Plan to  
23 further the coequal goals. (§ 85054; see §§ 85001, subd. (c), 85059, 85300, subd. (a).) The  
24 Council unanimously adopted the Delta Plan in May 2013. (*Delta Stewardship Council*  
25 *Cases, supra*, 48 Cal.App.5th at p. 1041.)

26 The Delta Plan, which spans nearly 300 pages, provides a detailed history,  
27 description, and analysis of the various problems and challenges facing  
28 the Delta. It is intended to be a foundational document that prioritizes actions  
and strategies in support of key objectives, such as the requirement to reduce



1 reliance on the Delta to meet future water supply needs. It also restricts actions  
2 that may cause harm; serves as a guidebook for all plans, projects, and programs  
3 that affect the Delta; and calls for further investigation and focused study of  
4 specific issues.

(*Id.* at p. 1042.)

5 The working parts of the Delta Plan are 73 recommendations and 14 policies.  
6 The recommendations are nonregulatory but call out actions essential to  
7 achieving the coequal goals of the Delta Reform Act in a manner that protects  
8 and enhances Delta values as an evolving place. By contrast, the policies are  
9 regulatory in nature; state and local agencies proposing to undertake a ‘covered  
10 action’—a land use action as defined in the Act—must comply with the policies.

(*Delta Stewardship Council Cases, supra*, 48 Cal.App.5th at p. 1042, fn. omitted.)

### 11 **C. The Mandated Certification of Consistency Process**

12 State and local land use actions that are “covered actions” must be consistent with the  
13 Delta Plan. (§ 85022, subd. (a).) “ ‘In contrast to how many other governmental plans are  
14 implemented, the Council does *not* exercise direct review and approval authority over covered  
15 actions to determine their consistency with the regulatory policies in the Delta Plan. Instead,  
16 State or local agencies self-certify Delta Plan consistency, and the Council serves as an  
17 appellate body for those determinations.’” (*Delta Stewardship Council Cases, supra*, 48  
18 Cal.App.5th at p. 1042.)

19 “Covered action” is defined as “a plan, program, or project as defined pursuant to  
20 Section 21065 of the Public Resources Code that meets all of the following conditions:

21 (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun  
22 marsh[;]

23 (2) Will be carried out, approved, or funded by the state or a local public agency[;]

24 (3) Is covered by one or more provisions of the Delta Plan[;] [and]

25 (4) Will have a significant impact on achievement of one or both of the coequal goals or  
26 the implementation of government-sponsored flood control programs to reduce risks to  
27 people, property, and state interests in the Delta.”

(§ 85057.5.)

1 Public Resources Code section 21065 defines “project” as “an activity which may cause  
2 either a direct physical change in the environment, or a reasonably indirect physical change in  
3 the environment, and which is any of the following:

4 (a) An activity directly undertaken by any public agency[;]

5 (b) An activity undertaken by a person which is supported, in whole or in part, through  
6 contracts, grants, subsidies, loans, or other forms of assistance from one or more  
7 public agencies[;] [or]

8 (c) An activity that involves the issuance to a person of lease, permit, license,  
9 certificate, or other entitlement for use by one or more public agencies.”

10 The Act further identifies various actions that do not qualify as a “covered action,”  
11 including, among other things, a regulatory action of a state agency, routine maintenance and  
12 operation of the Central Valley Project and State Water Project, and routine maintenance and  
13 operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a  
14 local public agency. (*Delta Stewardship Council Cases, supra*, 48 Cal.App.5th at pp. 1043-  
15 1044.)

16 In compliance with the Legislature’s directive for the Council “[t]o adopt regulations or  
17 guidelines as needed to carry out the powers and duties identified in [the Act]” (§ 85210, subd.  
18 (i)), the Council adopted a regulation that further defines “covered action” as “a plan, program,  
19 or project” meeting all of the following criteria:

20 (A) Is a ‘project,’ as defined pursuant to section 21065 of the Public Resources Code;

21 (B) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;

22 (C) Will be carried out, approved, or funded by the State or a local public agency;

23 (D) Will have a significant impact on achievement of one or both of the coequal goals  
24 or the implementation of government-sponsored flood control programs to reduce risks  
25 to people, property, and State interests in the Delta; and

26 (E) Is covered by one or more provisions of the Delta Plan . . . .

27 (Cal. Code Regs., tit. 23, § 5001, subd. (j)(1)(A)-(E).)  
28

1 The state or agency must, in the first instance, determine if the “proposed action” is a  
2 “covered action” within the meaning of the Act. (Cal. Code Regs., tit. 23, § 5002, subd. (a).)

3 Importantly, the Act requires agencies that “propose” to undertake a “covered action”  
4 to prepare a written statement certifying the covered action is consistent with the Act’s  
5 coequal goals and the Delta Plan “**prior to initiating the implementation of that covered**  
6 **action.**” (§ 85225, emphasis added.) After the agency files the written certification of  
7 consistency, any person who claims that a proposed covered action is inconsistent with  
8 the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse  
9 impact on the achievement of one or both of the coequal goals, may file an appeal with the  
10 Council. (§ 85225.10, subd. (a).) If no appeal is filed, the state or local public agency may  
11 proceed to implement the covered action. (§ 85225.15.) If an appeal is filed,  
12 the Council must hold a hearing, unless it is determined that the issue raised on appeal is not  
13 within the Council’s jurisdiction or does not raise an appealable issue. (§ 85225.20.)

14 Following a “consistency” hearing on an appealed action, the Council must make  
15 “specific written findings either denying the appeal or remanding the matter to the state or  
16 local public agency for reconsideration of the covered action based on the finding that the  
17 certification of consistency is not supported by substantial evidence in the record before the  
18 state or local public agency that filed the certification. Upon remand, the state or local agency  
19 may determine whether to proceed with the covered action. If the agency, on remand,  
20 “decides to proceed with the action or with the action as modified to respond to the findings of  
21 the council, the agency shall, prior to proceeding with the action, file a revised certification of  
22 consistency that addresses each of the findings made by the council and file that revised  
23 certification with the council.” (§ 85225.25.)

24 Per Council regulation, a state or local public agency may not initiate implementation  
25 of the covered action until the conclusion of the appeals process and unless and until: (1) The  
26 Council has found that “no appellant has shown that the certification of consistency is not  
27 supported by substantial evidence in the record on any appealed issue”; (2) after a hearing,  
28 the Council has adopted no finding that the certification of consistency is not supported by

1 substantial evidence; (3) certain conditions on remand have been met; (4) the appellant has  
2 withdrawn the appeal; or (5) the Council or its executive officer has dismissed the appeal.  
3 (Cal. Code Regs., tit. 23, § 5034.)

### 4 III. FACTUAL AND PROCEDURAL BACKGROUND

5 Rather than burden the Court and the parties with voluminous redundant material,  
6 Petitioners incorporate by reference herein the Factual and Procedural Background set forth at  
7 pages 10-14 in “County of Sacramento and Sacramento County Water Agency’s  
8 Memorandum of Points and Authorities in Support of Their Motion for Preliminary  
9 Injunction” (“Incorporated MPA”) (**Related Case No. 24WM00014**) and the documents filed  
10 in support of that motion, including the Request for Judicial Notice (“RJN”), Declaration of  
11 Louinda V. Lacey (“Lacey Declaration”), and Declaration Dante John Nomellini, Jr.  
12 (“Nomellini Declaration”). The Incorporated MPA, RJN, Lacey Declaration (*sans its*  
13 *voluminous exhibits*) and Nomellini Declaration are appended to this Memorandum of Points  
14 and Authorities as Attachments 1, 2, 3 and 4, respectively.

15 In their Verified Petition on file herein, Petitioners challenged DWR’s approval of the  
16 Project and its certification of the DCP FEIR under CEQA and various other legal authorities.  
17 (Declaration of Thomas H. Keeling in support of Petitioner’s Motion for Preliminary  
18 Injunction (“Keeling Decl.”) at ¶ 3.) One of the legal bases set forth in the Verified Petition is  
19 that the Project conflicts with the coequal goals of the Act to protect, restore, and enhance the  
20 Delta ecosystem. (Keeling Decl. ¶¶ 4-5, citing Paragraphs 801-814 at pages 169-171 of the  
21 Verified Petition.) Petitioners herein prayed for issuance of preliminary and permanent  
22 injunctive relief based, in part on DWR’s failure to comply with the requirements of the Act.  
23 (Keeling Decl. ¶ 6, citing Verified Petition at p. 174, lines 21-24.)

24 On April 3, 2024, Petitioners’ counsel and counsel for other petitioners in the related  
25 cases participated in a meeting with DWR’s counsel to discuss the geotechnical activities that  
26 DWR intended to undertake starting on May 1, 2024. (Keeling Decl. ¶ 7.) Shortly before that  
27 meeting began, DWR sent a document titled “2024 Preconstruction Field Investigations –  
28 Environmental Compliance, Clearance, and Monitoring Plan” (“2024 Preconstruction Plan”)

1 to the meeting attendees approximately 1.5 hours before the meeting. (Keeling Decl. ¶ 7.)  
2 Petitioners hereby incorporate the discussion regarding the 2024 Preconstruction Plan, as set  
3 forth in Exhibit 1 to the Keeling Declaration.

4 During the April 3, 2024, meeting, DWR represented that the geotechnical activities  
5 planned for May and June 2024 would be performed under a voluntary “temporary entry  
6 permit” (Permit) with respective landowners. (Keeling Decl. ¶ 8.) Petitioner incorporates the  
7 discussion regarding the Permit and its terms, as set forth in Section III.C. of the Incorporated  
8 MPA and the citations to the Declaration of Dante J. Nomellini, Jr. in support of the  
9 Incorporated MPA, as if fully set forth herein. (Attachment 1 at pp. 12-13.) Petitioner further  
10 incorporates the discussion regarding the location of the geotechnical activities, as set forth in  
11 Section III.C. of the Incorporated MPA and citation to the RJN in the support of the  
12 Incorporated MPA, as if fully set forth herein. (Attachment 1 at p. 13.)

13 On April 8, 2024, Petitioners City of Stockton, County of Sacramento, Sacramento  
14 County Water Agency, and Sacramento Area Sewer District (“SSD Parties”) sent DWR a  
15 letter regarding their intent to file a motion to enjoin DWR from undertaking the geotechnical  
16 activities. (Attachment 3 hereto (Lacey Decl.) at ¶ 6 & Exh. 3.) DWR convened a call with  
17 the attorneys representing the SSD Parties and attorneys for other petitioners, including  
18 Petitioners herein, in the related cases on that issue on April 12, 2024. (Keeling Decl., ¶ 9.)  
19 Because DWR refused to agree to postpone the geotechnical activities until it files a  
20 certification of consistency with the Council, Petitioners herein, along with the SSD Parties,  
21 San Francisco Baykeeper et al., County of Butte, and South Delta Water Agency et al., sent  
22 DWR follow-up correspondence on April 15, 2024. (Attachment 3 hereto (Lacey Decl.) at  
23 ¶ 8.) DWR responded to the correspondence on April 22, 2024. (Attachment 3 hereto (Lacey  
24 Decl.) at ¶ 9.) DWR has refused to postpone the geotechnical activities despite its knowledge  
25 that various parties are filing motions for preliminary injunction. (Keeling Decl. ¶ 10.)

#### 26 **IV. PRELIMINARY INJUNCTION STANDARD OF REVIEW**

27 The purpose of a preliminary injunction is “to preserve the status quo until a final  
28 determination following a trial.” (*Nutro Products, Inv. v. Cole Grain Co.* (1992) 3

1 Cal.App.4th 860, 865.) Code of Civil Procedure section 526 “lists seven circumstances when  
2 a preliminary injunction may be granted, including (1) when ‘the commission or continuance  
3 of some act during the litigation would produce waste, or great or irreparable injury, to a party  
4 to the action’ [citation]; (2) when a party is doing or is threatening to do some act in violation  
5 of the rights of another party, which act would tend to render the judgment ineffectual  
6 [citation]; or (3) when monetary compensation would be inadequate relief or extremely  
7 difficult to ascertain [citation].” (*Tulare Lake Canal Co. v. Stratford Public Utility Dist.*  
8 (2023) 92 Cal.App.5th 380, 396 (*Tulare Lake*).

9 In exercising its discretion to issue a preliminary injunction, “the trial court must  
10 consider two interrelated factors, specifically, the likelihood that plaintiffs will prevail on the  
11 merits at trial, and the comparative harm to be suffered by plaintiffs if the injunction does not  
12 issue against the harm to be suffered by defendants . . . if it does.” (*The Right Site Coalition v.*  
13 *Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 336, 341-342, internal quotations  
14 omitted.) “The potential merit and interim harm are described as *interrelated* factors because  
15 the greater the plaintiff’s showing on one, the less must be shown on the other to obtain an  
16 injunction,” such that the court’s goal is “to minimize the harm that an erroneous interim  
17 decision would cause.” (*Tulare Lake, supra*, 92 Cal.App.5th at pp. 396-397.)

## 18 V. ARGUMENT

19 Petitioners seek a preliminary injunction on the discrete issue of whether DWR is  
20 unlawfully initiating implementation of the Project in violation of Section 85225 by  
21 undertaking geotechnical investigations that are an integral part of the Project, as described in  
22 the FEIR. The scope of the requested prohibitory injunction is thus quite narrow. The  
23 requested injunction would enjoin DWR from initiating implementation of the Project only  
24 until DWR files the certification of consistency with the Council for the Project.

25 Again, rather than burden the Court and the parties with voluminous redundant  
26 material, Petitioners incorporate by reference herein the Argument set forth at pages 15-19 in  
27 the Incorporated MPA (**Related Case No. 24WM00014**) and the documents filed in support  
28 of that motion, including the RJN, Lacey Declaration, and Nomellini Declaration. As

1 previously noted, the Incorporated MPA, RJN, Lacey Declaration (*sans its voluminous*  
2 *exhibits*) and Nomellini Declaration are appended to this Memorandum of Points and  
3 Authorities as Attachments 1, 2, 3 and 4, respectively.

4 As amply demonstrated in the above-referenced and incorporated material from  
5 **Related Case No. 24WM00014**, Petitioners fully satisfy the standards for obtaining the relief  
6 sought herein. Petitioners would suffer the same harm as that identified by County of  
7 Sacramento and Sacramento County Water Agency. The Project would be constructed within  
8 Petitioners' boundaries, where geotechnical activities would also be conducted, and DWR's  
9 failure to file the certification of consistency has precluded Petitioners from obtaining the  
10 automatic stay that they would otherwise automatically have been entitled if DWR had  
11 followed the law. The physical and procedural harm arising from DWR's violation of Section  
12 85225, coupled with the public policy behind the Act and the public interest in informed  
13 decisionmaking, support the issuance of a preliminary injunction until DWR complies with the  
14 Act.

## 15 VI. CONCLUSION

16 Petitioners' arguments on the merits – i.e., that DWR is initiating implementation of a  
17 covered action in violation of Section 85225 – are compelling because the Project is, as DWR  
18 concedes, a covered action under the Act and the geotechnical and related activities are part of  
19 the Project. The relative harm that will follow if DWR is not enjoined tips the scales of equity  
20 in favor of issuing a preliminary injunction. Petitioners thus respectfully request that this court  
21 enjoin DWR from initiating implementation of the Project unless and until it files a  
22 certification of consistency with the Council.

23 Dated: May 8, 2024

FREEMAN FIRM

24  
25 By:



26 THOMAS H. KEELING  
27 Attorney for Plaintiffs/Petitioners  
28 County of San Joaquin, County of Contra Costa  
and Contra Costa County Water Agency,  
County of Solano, County of Yolo and Central  
Delta Water Agency

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: May 8, 2024

SOLURI MESERVE,  
A LAW CORPORATION

By: 

OSHA R. MESERVE  
Attorney for Plaintiffs/Petitioners  
County of San Joaquin, County of Contra Costa,  
Contra Costa County Water Agency, County of  
Solano, County of Yolo, Central Delta Water  
Agency, and Local Agencies of the North Delta

Dated: May 8, 2024

LAW OFFICES OF ROGER B. MOORE

By: 

Roger B. Moore  
Attorney for Plaintiffs/Petitioners  
County of San Joaquin, County of Contra Costa  
and Contra Costa County Water Agency,  
County of Solano, County of Yolo and Central  
Delta Water Agency



# **ATTACHMENT 1**

1 LISA A. TRAVIS (SBN 184793)  
County Counsel  
2 WILLIAM C. BURKE (SBN 213279)  
Deputy County Counsel  
3 COUNTY OF SACRAMENTO  
700 H Street, Suite 2650  
4 Sacramento, CA 95814  
Telephone: (916) 874-5544  
5 Facsimile: (916)874-8207  
[burkew@saccounty.gov](mailto:burkew@saccounty.gov)

6  
7 SOMACH SIMMONS & DUNN  
A Professional Corporation  
8 KELLEY M. TABER (SBN 184348)  
LOUINDA V. LACEY (SBN 275888)  
500 Capitol Mall, Suite 1000  
9 Sacramento, CA 95814  
Telephone: (916) 446-7979  
10 Facsimile: (916) 446-8199  
[ktaber@somachlaw.com](mailto:ktaber@somachlaw.com)  
11 [llacey@somachlaw.com](mailto:llacey@somachlaw.com)

12 Attorneys for Petitioners and Plaintiffs  
County of Sacramento and Sacramento  
13 County Water Agency

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE, § 6103**

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California  
17 county, and SACRAMENTO COUNTY  
WATER AGENCY, a California water  
18 district,

19 Petitioners and Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF  
WATER RESOURCES, a California state  
22 agency,

23 Respondent and Defendant,

24 DOES 1 through 50,

25 Real Parties in Interest,

26  
27 AND RELATED ACTIONS.

**Case No. 24WM000014**

(Related to 24WM000006; 24WM000008;  
24WM000009; 24WM000010; 24WM000011;  
24WM000012; 24WM000017; 24WM000062)

**Assigned to Hon. Stephen P. Acquisto  
Department 36**

CALIFORNIA ENVIRONMENTAL QUALITY  
ACT (CEQA) CASE

**COUNTY OF SACRAMENTO AND  
SACRAMENTO COUNTY WATER  
AGENCY'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
THEIR MOTION FOR PRELIMINARY  
INJUNCTION**

**DATE: May 31, 2024**

**TIME: 1:30 p.m.**

**DEPT: 36**

Petition Filed: January 22, 2024

Amended Petition Filed: February 16, 2024

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	5
II. LEGAL BACKGROUND .....	6
A. The Legislature’s Concerns About the Delta .....	6
B. The Council and the Delta Plan .....	7
C. The Mandated Certification of Consistency Process .....	7
III. FACTUAL AND PROCEDURAL BACKGROUND.....	10
A. The Project Description in the FEIR Includes the Geotechnical Activities.....	10
B. The Litigation.....	11
C. The Proposed Geotechnical Activities .....	12
D. Meet and Confer.....	14
IV. PRELIMINARY INJUNCTION STANDARD OF REVIEW .....	14
V. ARGUMENT .....	15
A. Petitioners Will Prevail on the Merits at Trial .....	15
B. An Injunction Should Issue to Avoid Irreparable Harm .....	17
VI. CONCLUSION .....	19

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page(s)

Cases

*Delta Stewardship Council Cases*  
(2020) 48 Cal.App.5th 1014 ..... 5, 6, 7

*IT Corp v. County of Imperial*  
(1983) 35 Cal.3d 63 ..... 18

*Merced Irrigation Dist. v. Superior Court*  
(2017) 7 Cal.App.5th 916 ..... 16

*Nutro Products, Inc. v. Cole Grain Co.*  
(1992) 3 Cal.App.4th 860 ..... 14

*Right Site Coalition v. Los Angeles Unified School Dist.*  
(2008) 160 Cal.App.4th 336 ..... 14

*Tulare Lake Canal Co. v. Stratford Public Utility Dist.*  
(2023) 92 Cal.App.5th 380 ..... 14, 15, 17, 18

*2710 Sutter Ventures, LLC v. Millis*  
(2022) 82 Cal.App.5th 842 ..... 16

**Statutes and Regulations**

Cal. Code Regs, title 14, section  
15094..... 10  
15373..... 10

Cal. Code Regs., title 23, section  
5001(k)(1)(A)-(E) ..... 9  
5002(a) ..... 9  
5034..... 5, 10, *passim*

Code of Civil Procedure section 526 ..... 14

Public Resources Code section  
21065..... 7, 8  
21108(a) ..... 10  
29101..... 5

1 Wat. Code section  
12220..... 5  
2 85000 et seq. .... 5  
85001(c) ..... 7  
3 85022(a) ..... 7  
85022(c)(2)-(3)..... 7, 18  
4 85022(c)(4)..... 7  
85054..... 7  
5 85058..... 5  
85059..... 7  
6 85225..... 5, 6, *passim*  
7 85225.10(a) ..... 9  
85225.15 ..... 9  
8 85225.20 ..... 9  
9 85225.25 ..... 9, 19  
85300(a) ..... 7

10 **Other Authorities**

11 <https://www.merriam-webster.com/dictionary/initiate> ..... 16  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Concerned about the state and health of the Sacramento-San Joaquin River Delta (Delta),<sup>1</sup>  
4 the Legislature adopted the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code,  
5 § 85000 et seq.) (Act) and directed the Delta Stewardship Council (Council) to adopt and  
6 implement a Delta Plan—a legally enforceable, comprehensive, long-term management plan for  
7 the Delta that furthers coequal goals to: (a) secure a reliable water supply for California; and  
8 (b) protect, restore, and enhance the Delta ecosystem and the fish, wildlife, and recreation it  
9 supports. (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1028 (*DSCC*)). Per  
10 the legislative directive, the Council adopted the Delta Plan in 2013. (*Id.* at p. 1041.)

11 Under the Act, “state and local land use actions that qualify as covered actions must be  
12 consistent with the Delta Plan.” (*DSCC, supra*, 48 Cal.App.5th at p. 1044.)

13 The Act requires any state or local public agency that proposes to undertake a  
14 covered action to prepare a written certification of consistency *prior to initiating*  
15 *the implementation of that covered action*, with detailed findings as to whether the  
covered action is consistent with the Delta Plan, and then to submit that  
certification to the Council.

16 (*Ibid.*, emphasis added, citing Wat. Code, § 85225.) The filing of the certification of consistency  
17 triggers the right of *any person* to appeal the consistency determination. (*DSCC, supra*, at  
18 p. 1044.) During the pendency of any such appeal, the covered action “shall not be implemented”  
19 unless certain conditions have been met. (Cal. Code Regs., tit. 23, § 5034.)

20 Petitioners and Plaintiffs County of Sacramento and Sacramento County Water Agency  
21 (collectively, “Petitioners”) bring this Motion for Preliminary Injunction (Motion) against the  
22 California Department of Water Resources (“DWR” or “Respondent”) to enjoin the geotechnical  
23 activities that DWR is undertaking and plans to undertake pursuant to the Delta Conveyance  
24 Project (“DCP” or “Project”) final environmental impact report (FEIR). DWR’s planned  
25 geotechnical activities are, as expressly acknowledged by DWR in the FEIR, an inextricable part

26 \_\_\_\_\_  
27 <sup>1</sup> The term “Delta” in the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) is defined  
28 to include the definition in Water Code section 12220 “and the Suisun Marsh, as defined in Section 29101 of the  
Public Resources Code.” (Wat Code, § 85058.)

1 of the Project. As also expressly acknowledged by DWR, the Project (including the geotechnical  
2 activities) is a “covered action” within the meaning of the Act. DWR has not, however, filed the  
3 requisite written certification of consistency with the Council prior to initiating implementation of  
4 the Project. Based on these indisputable facts and the harm arising from DWR’s actions, as  
5 described herein, Petitioners seek a preliminary injunction to enjoin DWR from initiating  
6 implementation of the Project until DWR files a certification of consistency with the Council in  
7 accordance with Water Code<sup>2</sup> section 85225 (Section 85225).

## 8 II. LEGAL BACKGROUND

### 9 A. The Legislature’s Concerns About the Delta

10 The Delta “is the most valuable estuary and wetland ecosystem on the west coast of North  
11 and South America, and is the hub of California’s water delivery system” because it is “endowed  
12 with many invaluable and unique resources of major statewide significance, including highly  
13 productive agriculture, recreational assets, fisheries, and wildlife environment.” (*DSCC, supra*,  
14 48 Cal.App.5th at p. 1027.) The economies of major regions in California also depend “on the  
15 ability to use water within the Delta watershed or to import water from the Delta watershed.”  
16 (*Ibid.*) “In 2009, after decades of conflict and unsuccessful efforts to comprehensively address  
17 the many problems and challenges facing the Delta, the Legislature found and declared that the  
18 ‘Delta watershed and California’s water infrastructure are in crisis and existing Delta policies are  
19 not sustainable,’ and that ‘[r]esolving the crisis requires fundamental reorganization of the state’s  
20 management of Delta watershed resources.’ ” (*Id.* at pp. 1027-28.)

21 In response to this crisis, the Legislature enacted the Act, finding, among other things,  
22 that: “[t]he permanent protection of the Delta’s natural and scenic resources is the paramount  
23 concern to present and future residents of the state and nation”; and “[t]o promote the public  
24 safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the  
25 natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent  
26

---

27 <sup>2</sup> All further undesignated section references are to the Water Code unless otherwise specified. Any subdivisions  
28 referenced immediately follow the code or regulation citation.

1 its further deterioration and destruction.” (§ 85022(c)(2)-(3).) The Legislature further found that  
2 existing and future developments “that are carefully planned and developed consistent with the  
3 policies of this division, are essential to the economic and social well-being of the people of this  
4 state and especially to persons living and working in the Delta.” (*Id.*, subd. (c)(4).)

5 **B. The Council and the Delta Plan**

6 The Legislature created the Council as an independent agency of the state (§ 85200(a))  
7 and charged it with adopting and implementing the Delta Plan to further the coequal goals.  
8 (§ 85054; see also §§ 85001(c), 85059, 85300(a).) The Council adopted the Delta Plan in May  
9 2013. (*DSCC, supra*, 48 Cal.App.5th at p. 1041.)

10 The Delta Plan, which spans nearly 300 pages, provides a detailed history,  
11 description, and analysis of the various problems and challenges facing the Delta.  
12 It is intended to be a foundational document that prioritizes actions and strategies  
13 in support of key objectives, such as the requirement to reduce reliance on the  
14 Delta to meet future water supply needs. It also restricts actions that may cause  
15 harm; serves as a guidebook for all plans, projects, and programs that affect the  
16 Delta; and calls for further investigation and focused study of specific issues.

14 (*Id.* at p. 1042.)

15 The working parts of the Delta Plan are 73 recommendations and 14 policies. The  
16 recommendations are nonregulatory but call out actions essential to achieving the  
17 coequal goals of the Delta Reform Act in a manner that protects and enhances  
18 Delta values as an evolving place. By contrast, the policies are regulatory in  
19 nature; state and local agencies proposing to undertake a “covered action”—a land  
20 use action as defined in the Act—must comply with the policies.

19 (*Ibid.*, fn. omitted.)

20 **C. The Mandated Certification of Consistency Process**

21 State and local land use actions that qualify as “covered actions” must be consistent with  
22 the Delta Plan. (§ 85022(a).) “ ‘In contrast to how many other governmental plans are  
23 implemented, the Council does *not* exercise direct review and approval authority over covered  
24 actions to determine their consistency with the regulatory policies in the Delta Plan. Instead,  
25 State or local agencies self-certify Delta Plan consistency, and the Council serves as an appellate  
26 body for those determinations.’ ” (*DSCC, supra*, 48 Cal.App.5th at p. 1042.)

27 “Covered action” is defined as “a plan, program, or project” defined under Public



1 Resources Code (PRC) section 21065 meeting the following conditions: “(1) Will occur, in whole  
2 or in part, within the boundaries of the Delta or Suisun marsh[; ¶] (2) Will be carried out,  
3 approved, or funded by the state or a local public agency[; ¶] (3) Is covered by one or more  
4 provisions of the Delta Plan[;] [and] [¶] (4) Will have a significant impact on achievement of one  
5 or both of the coequal goals or the implementation of government-sponsored flood control  
6 programs to reduce risks to people, property, and state interests in the Delta.” (§ 85057.5(a).)

7 PRC section 21065 defines “project” as “an activity which may cause either a direct  
8 physical change in the environment, or a reasonably indirect physical change in the environment,  
9 and which is any of the following: [¶] (a) An activity directly undertaken by any public  
10 agency[; ¶] (b) An activity undertaken by a person which is supported, in whole or in part,  
11 through contracts, grants, subsidies, loans, or other forms of assistance from one or more public  
12 agencies[; ¶] [or] (c) An activity that involves the issuance to a person of lease, permit, license,  
13 certificate, or other entitlement for use by one or more public agencies.”

14 The Act further identifies various actions that do not qualify as a “covered action,”  
15 including, among other things, a regulatory action of a state agency, routine maintenance and  
16 operation of the Central Valley Project (CVP) and State Water Project (SWP), and routine  
17 maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or  
18 operated by a local public agency. (*DSCC, supra*, 48 Cal.App.5th at pp. 1044.)

19 In accordance with the Legislature’s directive for the Council “[t]o adopt regulations or  
20 guidelines as needed to carry out the powers and duties identified in [the Act]” (§ 85210(i)), the  
21 Council adopted a regulation that further defines “covered action” as “a plan, program, or  
22 project” meeting all of the following criteria: “(A) Is a ‘project,’ as defined pursuant to section  
23 21065 of the [PRC]; [¶] (B) Will occur, in whole or in part, within the boundaries of the Delta or  
24 Suisun Marsh; [¶] (C) Will be carried out, approved, or funded by the State or a local public  
25 agency; [¶] (D) Will have a significant impact on achievement of one or both of the coequal goals  
26 or the implementation of government-sponsored flood control programs to reduce risks to people,  
27 property, and State interests in the Delta; and [¶] (E) Is covered by one or more provisions of the

1 Delta Plan... ." (Cal. Code Regs., tit. 23, § 5001(k)(1)(A)-(E).) The state or local agency must,  
2 however, first determine if the "proposed action" is a "covered action" under the Act. (*Id.*,  
3 § 5002(a).)

4 Importantly, and as noted, the Act requires agencies that "propose" to undertake a  
5 "covered action" to prepare a written statement certifying the covered action is consistent with the  
6 Act's coequal goals and the Delta Plan "prior to initiating the implementation of that covered  
7 action[.]" (§ 85225.) After the agency files the written certification of consistency, "any person  
8 who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of  
9 that inconsistency, the action will have a significant adverse impact on the achievement of one or  
10 both of the coequal goals ... may file an appeal" with the Council. (§ 85225.10(a).) If no appeal  
11 is filed, the state or local public agency may proceed to implement the covered action.  
12 (§ 85225.15.) If an appeal is filed, the Council must hold a hearing, unless the issue raised on  
13 appeal is not within the Council's jurisdiction or does not raise an appealable issue. (§ 85225.20.)

14 Following a hearing on an appealed action, the Council must "make specific written  
15 findings either denying the appeal or remanding the matter to the state or local public agency for  
16 reconsideration of the covered action based on the finding that the certification of consistency is  
17 not supported by substantial evidence in the record before the state or local public agency that  
18 filed the certification." (§ 85225.25.) Section 85225.25 further prescribes that, if the agency on  
19 remand "decides to proceed with the action or with the action as modified to respond to the  
20 findings of the council, the agency shall, prior to proceeding with the action, file a revised  
21 certification of consistency that addresses each of the findings made by the council and file that  
22 revised certification with the council."

23 Per Council regulation, a state or local public agency may not initiate implementation of  
24 the covered action until the conclusion of the appeals process and unless and until (1) the Council  
25 has found "no appellant has shown that the certification of consistency is not supported by sub-  
26 stantial evidence in the record on any appealed issue," (2) after a hearing, the Council has adopted  
27 no finding the certification of consistency is not supported by substantial evidence, (3) certain

1 conditions on remand have been met, (4) the appellant has withdrawn the appeal, or (5) the  
2 Council or its executive officer has dismissed the appeal. (Cal. Code Regs., tit. 23, § 5034.)

### 3 III. FACTUAL AND PROCEDURAL BACKGROUND

#### 4 A. The Project Description in the FEIR Includes the Geotechnical Activities

5 After an agency decides to approve or carry out a project for which an environmental  
6 impact report (EIR) has been prepared, the agency must file a notice of determination (NOD) that  
7 includes an identification of the project. (PRC, § 21108(a); Cal. Code Regs, tit. 14, §§ 15094,  
8 15373.) DWR’s NOD for the DCP states the Project will include the following five “key com-  
9 ponents and actions”: (1) “[t]wo intake facilities along the Sacramento River in the north Delta  
10 near the community of Hood with on-bank intake structures that would include fish screens”;  
11 (2) a concrete-lined tunnel and associated vertical tunnel shafts to convey water from the intakes  
12 “to the Bethany Reservoir Pumping Plant and Surge Basin at a location south of the existing SWP  
13 Clifton Court Forebay”; (3) a “Bethany Reservoir Pumping Plant to lift the water from inside the  
14 tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany  
15 Reservoir Discharge Structure and into the existing Bethany Reservoir”; (4) other ancillary  
16 facilities to support construction and operation of the conveyance facilities; and (5) “[e]fforts to  
17 identify geotechnical, hydrogeologic, agronomic and other field conditions that will guide  
18 appropriate construction methods and monitoring programs for final engineering design and  
19 construction.” (Request for Judicial Notice in support of Petitioners’ Motion (RJN) p. 3[#1] &  
20 Exh. A, pdf p. 4, emphasis added.) The Project “involve[s] the construction and operation of new  
21 conveyance facilities for the movement of water entering the Delta from the Sacramento Valley  
22 watershed to the existing [SWP] and, potentially, to [CVP] facilities in the south Delta, which  
23 would result in a dual-conveyance system in the Delta.” (*Id.* p. 3[#3] & Exh. C 3-1:28-32.)

24 DWR explained in the NOD that “Chapter 3, *Description of the Proposed Project and*  
25 *Alternatives* of the [FEIR] provides further information on the above components and actions and  
26 related activities required as part of the Project[.]” (RJN, Exh. A pdf p. 4.) In the introduction  
27 section of FEIR Chapter 3, DWR explained: “Section 3.15, *Field Investigations*, describes past

1 and future efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions  
2 that will guide appropriate construction methods and monitoring programs for final engineering  
3 design and construction.” (RJN p. 3[#3] & Exh. C at 3-2:22-26.) Section 3.15 of the FEIR  
4 further provides:

5 [In addition to] soil investigations covered in the 2020 [Final Initial  
6 Study/Mitigated Negative Declaration] ... data collection and field work  
7 investigations would be conducted after completion of the [DCP] CEQA process  
8 and possible project approval. Work related to geotechnical, agronomic testing,  
9 and construction test projects (geotechnical investigations) would occur during the  
preconstruction and construction periods following adoption of the Final EIR,  
identification of an approved project footprint, and acquisition of all required  
permits.

10 (*Id.* at 3-134:15-21.)

11 Section 3.15 identifies and sets forth the specifics as to the foregoing work. (RJN p. 3[#3]  
12 & Exh. C at pp. 3-134 – 3-141.) DWR will drill hundreds of boreholes throughout the Delta,  
13 many hundreds of feet deep; conduct “cone penetrometer tests” that involve shaking the surface  
14 of the Delta (and mainland sites); and, in some cases will dredge massive trenches. (*Id.* at  
15 pp. 3-134 – 3-141; see also Declaration of Louinda V. Lacey in Support of Petitioners’ Motion  
16 (Lacey Decl.) ¶ 11 & Exh. 4 at pp. 1-4.) DWR estimates the geotechnical activities will be  
17 completed in approximately two years. (RJN, Exh. B at p. 3-134.)

## 18 **B. The Litigation**

19 On December 21, 2023, DWR certified the FEIR for and approved the Project, and  
20 adopted Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring  
21 and Reporting Program for the Project. (RJN p. 3[#2], Exh. B.) Petitioners filed an action  
22 challenging DWR’s approval of the Project and its certification of the FEIR for the Project under  
23 CEQA and various other legal authorities (Petition). (Lacey Decl. ¶ 7 & Exh. 1.) One of the  
24 legal bases set forth in the Petition is that the Project conflicts with the coequal goals of the Act to  
25 protect, restore, and enhance the Delta ecosystem. (*Id.*, Exh. 1 at pp. 13[subds. o & p.],  
26 14[subd. q], 18-19[Fifth Cause of Action].) Petitioners attached to the Petition their comments  
27 regarding the DCP’s inconsistency with the Delta Plan. (*Id.*, Exhs. 1 at p. 6[¶ 15]; 2 at pp. 17-

1 19[VI. A.], 46[XI.], 49-51 [XI. E.]; 3 at pp. 2-3.) Petitioners prayed for “issuance of a temporary  
2 restraining order, preliminary injunction, and permanent injunction prohibiting any actions by  
3 DWR pursuant to DWR’s approval of the Project and certification of the FEIR for the Project  
4 until DWR has fully complied with all requirements of CEQA and all other applicable state and  
5 local laws, policies, and regulations,” which include the Act, as alleged in the Petition. (*Id.*,  
6 Exh. 1 at p. 21.)

7 During the Case Management Conference on February 16, 2024, Petitioners’ counsel and  
8 counsel for other petitioners in the related cases raised concerns regarding rumors that DWR was  
9 planning to undertake geotechnical activities under the DCP FEIR sometime over the summer.  
10 (Lacey Decl. ¶ 10.) The trial court confirmed that motions for injunctive relief could be filed and  
11 heard prior to the next Case Management Conference on May 31, 2024. (*Ibid.*)

### 12 **C. The Proposed Geotechnical Activities**

13 On April 3, 2024, Petitioners’ counsel and counsel for other petitioners in the related cases  
14 participated in a meeting with DWR’s counsel to discuss the geotechnical activities that DWR  
15 intended to undertake starting on May 1, 2024. (Lacey Decl. ¶ 11.) Approximately 1.5 hours  
16 prior to the meeting, DWR sent a document titled “2024 Preconstruction Field Investigations –  
17 Environmental Compliance, Clearance, and Monitoring Plan” (2024 Preconstruction Plan) to the  
18 meeting attendees. (*Id.*, ¶ 11 & Exh. 4.) The 2024 Preconstruction Plan states the  
19 preconstruction field activities “are scheduled to begin in April 2023 (site clearance activities)  
20 and May 2024 (geotechnical investigations).” (*Id.*, Exh. 4 at p. 1.) The 2024 Preconstruction  
21 Plan further states, among other things:

22 FEIR Chapter 3 – *Description of the Proposed Project and Alternatives* describes  
23 the Project evaluated in the FEIR. Section 3.15 – Field Investigations explains that  
24 ‘work related to geotechnical, hydrogeologic, agronomic testing, and construction  
25 test projects (geotechnical investigations) would occur during the preconstruction  
and construction periods following the adoption of the EIR, identification of an  
approved project footprint, and acquisition of all required permits.’

26 (*Id.*, Exh. 4 at p. 2.)  
27  
28

1 During the April 3, 2024, meeting, DWR represented that the geotechnical activities  
2 planned for May and June 2024 would be performed under a voluntary “temporary entry permit”  
3 (Permit) with respective landowners. (Lacey Decl. ¶ 12.) The Permit states the owner’s property  
4 is within the “study area” for the Project footprint and that DWR is requesting the Permit “to  
5 conduct various surveys/studies to continue its planning and design efforts prior to implementing  
6 and constructing a single tunnel water conveyance system” in the Delta. (Declaration of Dante J.  
7 Nomellini, Jr. in Support of Petitioners’ Motion (Nomellini Decl.) ¶ 2 & Exh. 1, p. 2.)<sup>3</sup> In  
8 exchange for the right to enter the property and perform the activities, DWR offered to pay the  
9 landowner \$1,000 as “an Acquisition Incentive Payment” and \$7,500 “which represents the  
10 maximum amount of compensation for the probable damages (Probable Damages) resulting from  
11 DWR and/or its contractors’ use” of the property.<sup>4</sup> (*Id.*, Exh. 1, p. 6 [#4].) The landowner has 45  
12 days to agree to the Permit. (*Id.*, Exh. 1, p. 6 [#4].)

13 The Permit further provides that DWR agrees to indemnify and hold the landowner  
14 harmless “from any physical damage, including physical damage to the crops of [the landowner]  
15 or its tenant, proximately caused by the activities authorized by th[e] Permit. DWR also agrees to  
16 either reimburse [the landowner] for any damage to [the landowner’s] roads, fences, or other  
17 personal property occurring due to the exercise of rights granted herein, or to replace or restore  
18 said property.” (Nomellini Decl., Exh. 1, p. 6 [#6].)

19 Notably, not all geotechnical activities will occur in May and June 2024. The FEIR shows  
20 the location of the anticipated work related to the Project and specifically states, “Geotechnical  
21 investigations would also be conducted within all project feature construction boundaries.” (RJN  
22 Exh. D.) A comparison of maps in the FEIR and the map in the NOD further shows the  
23 geotechnical activities will be undertaken in the Delta. (RJN Exhs. A[*pdf*. p. 3(Fig.1)], D & F.)  
24

25 \_\_\_\_\_  
26 <sup>3</sup> The page references are to the physical pages in Exhibit 1 (*pdf* page) and not to the page numbers at the bottom of  
the Permit because not all pages of Exhibit 1 are numbered.

27 <sup>4</sup> It is unclear and unknown whether DWR is offering each landowner the \$7,500 or whether the amount depends on  
the proposed activities to be undertaken at the specific property.  
28

1 **D. Meet and Confer**

2 On April 8, 2024, Petitioners and Plaintiffs City of Stockton, County of Sacramento,  
3 Sacramento County Water Agency, and Sacramento Area Sewer District (SSD Parties) sent DWR  
4 a letter stating their intent to file a motion to enjoin DWR from undertaking the geotechnical  
5 activities. (Lacey Decl. ¶ 13 & Exh. 5.) DWR convened a call with the SSD Parties’ attorneys  
6 and attorneys for petitioners in the related cases on April 12, 2024. (*Id.*, ¶ 14.) In the absence of  
7 DWR agreeing to postpone the geotechnical activities until it files a certification of consistency  
8 with the Council, the SSD Parties, along with San Francisco Baykeeper et al., County of Butte,  
9 South Delta Water Agency et al., and County of San Joaquin et al., sent DWR follow-up  
10 correspondence on April 15, 2024. (*Id.*, ¶ 15 & Exh. 6.) DWR responded to the correspondence  
11 on April 22, 2024. (*Id.*, ¶ 16 & Exh. 7.) DWR has refused to postpone the geotechnical activities  
12 until the Court rules on the motions for preliminary injunction. (*Id.*, ¶ 17.)

13 **IV. PRELIMINARY INJUNCTION STANDARD OF REVIEW**

14 The purpose of a preliminary injunction “is to preserve the status quo until a final  
15 determination following a trial.” (*Nutro Products, Inc. v. Cole Grain Co.* (1992) 3 Cal.App.4th  
16 860, 865, internal quotes omitted.) Code of Civil Procedure section 526 lists circumstances when  
17 a preliminary injunction may be granted, including “when ‘the commission or continuance of  
18 some act during the litigation would produce waste, or great or irreparable injury, to a party to the  
19 action’ ” or “when a party is doing or is threatening to do some act in violation of the rights of  
20 another party, which act would tend to render the judgment ineffectual.” (*Tulare Lake Canal Co.*  
21 *v. Stratford Public Utility Dist.* (2023) 92 Cal.App.5th 380, 396 (*Tulare Lake*)).

22 In exercising its discretion to issue a preliminary injunction, “the trial court must consider  
23 *two interrelated factors*, specifically, the likelihood that plaintiffs will prevail on the merits at  
24 trial, and the comparative harm to be suffered by plaintiffs if the injunction does not issue against  
25 the harm to be suffered by defendants ... if it does.” (*Right Site Coalition v. Los Angeles Unified*  
26 *School Dist.* (2008) 160 Cal.App.4th 336, 341-342, internal quotes omitted.) “The potential merit  
27 and interim harm are described as *interrelated factors* because the greater the plaintiff’s showing  
28

1 on one, the less must be shown on the other to obtain an injunction”; the court’s goal is “to  
2 minimize the harm that an erroneous interim decision would cause.” (*Tulare Lake, supra*,  
3 92 Cal.App.5th at pp. 396-397.)

## 4 V. ARGUMENT

5 Petitioners seek a preliminary injunction on the discrete question whether DWR is  
6 unlawfully initiating implementation of the Project in violation of Section 85225 by undertaking  
7 geotechnical activities that form part of the Project, as described in the DCP FEIR. The scope of  
8 the requested prohibitory injunction is thus quite narrow. The requested injunction would enjoin  
9 DWR from initiating implementation of the Project only until DWR files the certification of  
10 consistency with the Council. Petitioners satisfy the standards for obtaining this relief.

### 11 A. Petitioners Will Prevail on the Merits at Trial

12 Petitioners will prevail on the merits at trial because: (1) the geotechnical activities being  
13 undertaken now and going forward are an inextricable part of the Project, a fact DWR has  
14 admitted in the DCP FEIR and NOD; (2) the geotechnical activities will be undertaken in the  
15 Delta; (3) DWR has affirmatively stated the Project, which includes the geotechnical activities, is  
16 a “covered action” under the Act; and (4) it is undisputed DWR has not filed a certification of  
17 consistency for the Project with the Council prior to initiating implementation of the geotechnical  
18 activities, in violation of Section 85225.

19 The 2024 Preconstruction Plan explains the geotechnical activities are described in the  
20 DCP FEIR and, consistent with the language in the NOD, describes the activities as “work related  
21 to geotechnical, hydrologic, agronomic testing, and construction test projects (geotechnical  
22 investigations)[.]” (Lacey Decl. Exh. 4, p. 2; RJN Exh. A, pdf. p. 4.) As shown by the maps in  
23 the DCP FEIR and NOD, the geotechnical activities will take place in the Delta. (RJN Exhs. A,  
24 D & F.) In Common Response 8 to the DCP FEIR, DWR affirmatively stated the Project  
25 “meet[s] the definition of a covered action” (*id.*, Exh. E at p. 8-6) and “DWR will fully comply  
26 with its obligations under the Delta Reform Act to certify consistency with the applicable policies  
27 in the *Delta Plan* before initiating implementation” of the Project (*id.* at p. 8-3). The Project,



1 which includes the geotechnical activities currently being undertaken and implemented, is thus,  
2 by DWR’s own admission, a “covered action” that requires a consistency determination. DWR  
3 has not, however, filed a certification of consistency with the Council. (*Id.* at 8-6:12 – 8-7:10.)

4 While neither the Legislature nor the Council has defined the phrase “initiate  
5 implementation” in Section 85225, the court may “appropriately refer to dictionary definitions to  
6 ascertain the ordinary, usual meaning of a word.” (*Merced Irrigation Dist. v. Superior Court*  
7 (2017) 7 Cal.App.5th 916, 926-927.) The First District Court of Appeal has already adopted a  
8 dictionary definition of “implement” within the context of another statute to mean “to carry out:  
9 accomplish; to give practical effect to and ensure actual fulfillment by concrete measures.” (2710  
10 *Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 858.) And the word “initiate” is  
11 further defined as “to cause or facilitate the beginning of” with synonyms that include begin,  
12 commence, start, introduce, and usher in, with the implication of “taking a first step in a process  
13 or series that is to continue.” (See <https://www.merriam-webster.com/dictionary/initiate>.)

14 Notably, the Legislature chose not to use the phrase “commence construction” in  
15 Section 85225, even though it used that phrase in Section 85088 (another part of the Act). The  
16 phrase “initiate implementation” by its plain, dictionary meaning is broader than “commence  
17 construction” insofar as “initiate implementation” incorporates actions that give practical effect to  
18 the Project and do not necessarily involve the construction of Project-related structures. It is thus  
19 clear the Legislature intended for agencies like DWR to submit consistency certifications to the  
20 Council prior to beginning preconstruction activities like the geotechnical activities at issue here.

21 Plainly, the geotechnical activities are intended to—and will—start, commence, and carry  
22 out the Project by giving practical effect to the Project’s initial components. DWR has thus  
23 “initiate[d] implementation” of the Project without first filing a certification of consistency, as  
24 required by Section 85225. Had DWR filed the certification of consistency, Petitioners would  
25 have filed an appeal, and the geotechnical activities would have automatically been stayed by  
26 regulation. (Cal. Code Regs., tit. 23, § 5034.) Petitioners are thus via this Motion seeking relief  
27 to which they would otherwise automatically have been entitled if DWR had followed the law.

1 **B. An Injunction Should Issue to Avoid Irreparable Harm**

2 Given the strength of Petitioners’ arguments on the merits, a limited showing of harm is  
3 needed to support the issuance of the preliminary injunction. (*Tulare Lake, supra*,  
4 92 Cal.App.5th at pp. 396-397.) That said, in the absence of an injunction, Petitioners and the  
5 public will suffer myriad harms, both procedural and physical (or actual). An injunction will  
6 further serve the public interest by ensuring that DWR does not implement a project that is  
7 inconsistent with the Delta Plan and the coequal goals stated in the Act.

8 As shown in the DCP FEIR, the geotechnical activities will occur within Petitioners’  
9 boundaries. (RJN Exh. D.) The geotechnical activities will undoubtedly result in damage to the  
10 properties where the activities are undertaken. Indeed, DWR says it will drill hundreds of  
11 boreholes throughout the Delta, many hundreds of feet deep; conduct “cone penetrometer tests”  
12 that involve shaking the surface of the Delta (and mainland sites); and, in some cases, will dredge  
13 massive trenches. (RJN Exh. C at pp. 3-134 – 3-145; (*Id.* at pp. 3-134 – 3-141; see also Lacey  
14 Decl. ¶ 11 & Exh. 4 at pp. 1-4.) And DWR has essentially admitted the geotechnical activities  
15 will cause physical harm to property. In the Permit that DWR is providing to landowners on  
16 whose properties it intends to undertake the geotechnical activities, DWR agrees to provide  
17 compensation for “probable damages” and other damages arising from its activities. (Nomellini  
18 Decl. ¶ 2 & Exh. 1, pp. 3 [#4], 6 [#6].) Petitioners are further informed that San Francisco  
19 Baykeeper, Shingle Springs Bank of Miwok Indians, California Indian Environmental Alliance,  
20 Restore the Delta, Golden State Salmon Association, and The Bay Institute will be submitting  
21 declarations in support of their related motion for preliminary injunction further detailing specific  
22 harm that will result from the geotechnical activities.

23 DWR’s undertaking of the geotechnical activities also constitutes procedural harm. As  
24 explained above, had DWR filed the certification of consistency as required under the Act,  
25 Petitioners would have filed an appeal and implementation of the geotechnical activities would  
26 have automatically been enjoined by regulation. (Cal. Code Regs., tit. 23, § 5034.) DWR is thus  
27 usurping Petitioners’ procedural right to have the Council determine whether the Project is

1 consistent with the Delta Plan and the coequal goals of the Act to protect, restore, and enhance the  
2 Delta ecosystem *before* DWR initiates implementation of the Project. Should the Council later  
3 determine that the Project is inconsistent with the Delta Plan and the coequal goals, the harm  
4 resulting from the geotechnical activities will have already occurred, despite the legally mandated  
5 procedures in place to avoid such a result.

6 In addition, when balancing the interests of the movant if an injunction does not issue with  
7 the competing interests of the non-movant if the injunction requested were to issue, the court  
8 must consider established public policy. (*Tulare Lake, supra*, 92 Cal.App.5th at p. 398.) Where,  
9 as here, the Legislature enacted a statutory provision proscribing a certain activity, it has already  
10 determined the activity is contrary to the public interest. (*IT Corp v. County of Imperial* (1983)  
11 35 Cal.3d 63, 70.) An activity contrary to the public interest is harm that may be enjoined by  
12 issuance of an injunction. (*Id.* at pp. 70-71.) The geotechnical activities DWR is undertaking are  
13 proscribed by Section 85225, and the Legislature has thus already determined that initiating  
14 implementation of the Project without first certifying its consistency with the Council is contrary  
15 to the public interest. Indeed, the Legislature enacted the Act for the very purpose to avoid  
16 further harm to the Delta. (*DSCC, supra*, 48 Cal.App.5th at pp. 1027-28; § 85022(c)(2)-(3).) The  
17 Council has likewise adopted a regulation staying implementation of a covered action when an  
18 appeal is filed challenging a certification of consistency. (Cal. Code Regs., tit. 23, § 5034.) Like  
19 the Legislature, the Council has thus determined that it is against public policy to allow an agency  
20 to implement a covered action until the conclusion of the appeals process under the Act.

21 DWR's actions also constitute harm to the public's right to information. In *Tulare Lake*,  
22 the court explained that an agency's failure to comply with CEQA is a harm to the public  
23 generally because the public has an interest in informed decision-making about projects with  
24 potentially significant environmental effects. (*Tulare Lake, supra*, 92 Cal.App.5th at p. 390.)  
25 The same is true regarding violations of the Act. The requirement that an agency file a  
26 certification of consistency for a covered action establishes a public process. It allows the public  
27 the opportunity to review the information relied upon by the agency in determining whether the

1 covered action is consistent with the Delta Plan and the coequal goals, and then allows the public  
2 to appeal that determination to the Council.

3 The Council must “make specific written findings either denying the appeal or remanding  
4 the matter to the state or local public agency for reconsideration of the covered action based on  
5 the finding that the certification of consistency is not supported by substantial evidence in the  
6 record before the state or local public agency that filed the certification.” (§ 85225.25.) The  
7 public has an interest in the agency’s informed decision-making about covered actions that may  
8 cause harm in and to the Delta, and in the Council’s specific written findings regarding a covered  
9 action’s consistency with the Delta Plan and coequal goals. By failing to file the certification of  
10 consistency, DWR undermines the Council’s authority to ensure compliance with the Act and to  
11 effectuate the public’s interest as articulated by the California Legislature.

12 The physical and procedural harm arising from DWR’s violation of Section 85225,  
13 coupled with the public policy behind the Act and the public interest in informed decision-  
14 making, support the issuance of a preliminary injunction until DWR complies with the Act.

15 **VI. CONCLUSION**

16 Petitioners’ arguments on the merits that DWR is initiating implementation of a covered  
17 action in violation of Section 85225 are compelling because the Project is, as DWR concedes, a  
18 covered action under the Act and the geotechnical activities are part of the Project. The relative  
19 harm that will follow if DWR is not enjoined tips the scales of equity in favor of issuing a  
20 preliminary injunction. Petitioners thus respectfully request that this Court enjoin DWR from  
21 initiating implementation of the Project unless and until it files a certification of consistency with  
22 the Council.

23 SOMACH SIMMONS & DUNN  
A Professional Corporation

24 DATED: May 8, 2024

25 By:  \_\_\_\_\_

Kelley M. Taber  
Louinda V. Lacey

26 Attorneys for Petitioners and Plaintiffs  
27 County of Sacramento and Sacramento County  
Water Agency

# **ATTACHMENT 2**

1 LISA A. TRAVIS (SBN 184793)  
County Counsel  
2 WILLIAM C. BURKE (SBN 213279)  
Deputy County Counsel  
3 COUNTY OF SACRAMENTO  
700 H Street, Suite 2650  
4 Sacramento, CA 95814  
Telephone: (916) 874-5544  
5 Facsimile: (916)874-8207  
[burkew@saccounty.gov](mailto:burkew@saccounty.gov)

6 SOMACH SIMMONS & DUNN  
A Professional Corporation  
7 KELLEY M. TABER (SBN 184348)  
8 LOUIDA V. LACEY (SBN 275888)  
500 Capitol Mall, Suite 1000  
9 Sacramento, CA 95814  
Telephone: (916) 446-7979  
10 Facsimile: (916) 446-8199  
[ktaber@somachlaw.com](mailto:ktaber@somachlaw.com)  
11 [llacey@somachlaw.com](mailto:llacey@somachlaw.com)

12 Attorneys for Petitioners and Plaintiffs  
County of Sacramento and Sacramento  
13 County Water Agency

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE, § 6103**

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California  
17 county, and SACRAMENTO COUNTY  
WATER AGENCY, a California water  
18 district,

19 Petitioners and Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF WATER  
RESOURCES, a California state agency,

22 Respondent and Defendant,

23  
24 DOES 1 through 50,

25 Real Parties in Interest,

26 AND RELATED ACTIONS.  
27  
28

**Case No. 24WM000014**

(Related to 24WM000006; 24WM000008;  
24WM000009; 24WM000010; 24WM000011;  
24WM000012; 24WM000017; 24WM000062)

**Assigned to Hon. Stephen P. Acquisto  
Department 36**

CALIFORNIA ENVIRONMENTAL QUALITY  
ACT (CEQA) CASE

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF COUNTY OF  
SACRAMENTO AND SACRAMENTO  
COUNTY WATER AGENCY'S MOTION  
FOR PRELIMINARY INJUNCTION**

**DATE: May 31, 2024  
TIME: 1:30 p.m.  
DEPT: 36**

Petition Filed: January 22, 2024  
Amended Petition Filed: February 16, 2024

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to Evidence Code Section 450 *et. seq.* and  
3 California Rules of Court, rules 3.1113(l) and 3.1306(c), Petitioners and Plaintiffs County of  
4 Sacramento and Sacramento County Water Agency (collectively “Petitioners”) hereby  
5 respectfully request that the Court take judicial notice of the documents identified below and  
6 attached hereto. These exhibits are submitted and offered for Petitioners’ Memorandum of Points  
7 and Authorities in support of their Motion for Preliminary Injunction (Motion). Judicial notice is  
8 proper because the exhibits are official acts of the California Department of Water Resources  
9 (DWR) pertaining to its approval of the Delta Conveyance Project Final Environmental Impact  
10 Report (DCP FEIR), and the existence and accuracy of the documents identified herein are not  
11 reasonably subject to dispute and are capable of immediate and accurate determination by resort  
12 to sources of reasonably indisputable accuracy. (Evid. Code, §§ 452, subs. (c) & (h).

13 **I. LEGAL STANDARD**

14 “Judicial notice is the recognition and acceptance by the court, for use ... by the court, of  
15 the existence of a matter of law or fact that is relevant to an issue in the action without requiring  
16 formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort*  
17 (2001) 91 Cal.App.4th 875, 882, internal quotes omitted.) A court may take judicial notice of any  
18 materials specified in Evidence Code section 452, including “[o]fficial acts of the legislative,  
19 executive, and judicial departments of the United States and of any state of the United States.”  
20 (Evid. Code, § 452, subd. (c).) The court may further take judicial notice of “[f]acts and  
21 propositions that are not reasonably subject to dispute and are capable of immediate and accurate  
22 determination by resort to sources of reasonably indisputable accuracy.” (*Id.* at subd. (h).)

23 **II. ARGUMENT**

24 The Evidence Code mandates judicial notice of matters that comport with the  
25 requirements of Evidence Code section 452. Evidence Code section 453 provides that judicial  
26 notice of any matter specified in section 452 is compulsory where a party requests it, gives each  
27 adverse party sufficient notice of the request, and “furnishes the court with sufficient information  
28 to enable it to take judicial notice of the matter.” Petitioners request that the Court take judicial

1 notice of the following documents that constitute official acts of DWR pertaining to its approval  
2 of the DCP FEIR, the existence and accuracy of which are not reasonably subject to dispute and  
3 are capable of immediate and accurate determination by resort to sources of reasonably  
4 indisputable accuracy (Evid. Code, §§ 452, subds. (c) & (h)):

5 1. The Notice of Determination issued by the Director of DWR on December 21,  
6 2023, for the DCP FEIR, which may be found on DWR’s website at  
7 <https://cadwr.app.box.com/s/xwscz3s54vbiwfljzohkcg6dl5902gk>. A true and correct copy is  
8 attached hereto as Exhibit A. (See Declaration of Louinda V. Lacey in Support of Petitioners’  
9 Motion filed concurrently herewith (Lacey Decl.), ¶ 2.)

10 2. The “Decisions” document pertaining to DWR’s Certification of the DCP FEIR,  
11 Adoption of Findings and Statement of Overriding Considerations, Mitigation, Monitoring and  
12 Reporting Program and Execution of a Notice of Determination, which was signed by the  
13 Director of DWR on December 21, 2023, and may be found on DWR’s website at  
14 <https://cadwr.app.box.com/s/g2ibx7wo7hjncdpzu1flc1i0yqrwexni>. A true and correct copy of the  
15 document is attached hereto as Exhibit B. (See Lacey Decl., ¶ 3.)

16 3. The following pages from Chapter 3 of the DCP FEIR, which may be found on  
17 DWR’s website at <https://cadwr.app.box.com/s/xbs1lry77n07u2cm60a8ledfvk31i3ra>: 3-1, 3-2,  
18 and 3-116 through 3-141. True and correct copies of the foregoing pages are attached hereto as  
19 Exhibit C. (See Lacey Decl., ¶ 4.)

20 4. A map book to Chapter 3 of the DCP FEIR, titled “**Figure: Index Bethany**  
21 **Reservoir Alignment** Alternative 5,” which may be found on DWR’s website at  
22 <https://cadwr.app.box.com/s/a7dp9bj7xcn3wnjx8exjsds6llrq6ny/file/1369521647499>. A true  
23 and correct copy is attached hereto as Exhibit D. (See Lacey Decl., ¶ 5.)

24 5. Common Response 8 “Relationship to Other Plans, Projects, Policies, and  
25 Programs” located in Chapter 3 of Volume 2 of the DCP FEIR, which may be found on DWR’s  
26 website at <https://cadwr.app.box.com/s/78ox5m81b03cywtjt3zvw459oam5n7>. A true and  
27 correct copy is attached hereto as Exhibit E. (See Lacey Decl. ¶ 6.)  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6. “Figure ES-1. Sacramento-San Joaquin Delta,” which is located on page 5 of the Executive Summary in the DCP FEIR and may be found on DWR’s website at <https://cadwr.app.box.com/s/28dykirctpwkny65amoxg7dxr125rl6p>. A true and correct copy is attached hereto as Exhibit F. (See Lacey Decl. ¶ 18.)

The foregoing documents are relevant to the Motion because they show pertinent actions taken and statements made by DWR regarding the Delta Conveyance Project (Project), which is at issue in this litigation. As explained in the Motion, Petitioners seek a preliminary injunction enjoining DWR from initiating implementation of the Project until DWR files a certification of consistency with the Delta Stewardship Council as required by Water Code section 85225.

**III. REQUEST**

For the foregoing reasons, Petitioners respectfully request that this Court grant their request for judicial notice of the exhibits described herein.

SOMACH SIMMONS & DUNN  
A Professional Corporation

DATED: May 8, 2024

By:  \_\_\_\_\_

Kelley M. Taber  
Louinda V. Lacey

Attorneys for Petitioners and Plaintiffs  
County of Sacramento and Sacramento County  
Water Agency

# Exhibit A

# Notice of Determination

# Appendix D

**To:**

Office of Planning and Research  
 U.S. Mail: \_\_\_\_\_ Street Address: \_\_\_\_\_  
 P.O. Box 3044 1400 Tenth St., Rm 113  
 Sacramento, CA 95812-3044 Sacramento, CA 95814

County Clerk  
 County of: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**From:**

Public Agency: Department of Water Resources  
 Address: 1516 9th St, Sacramento, CA 95814

Contact: Marcus Yee  
 Phone: 916-699-8405

Lead Agency (if different from above): \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Phone: \_\_\_\_\_

**SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): 2020010227

Project Title: Delta Conveyance Project Final EIR

Project Applicant: California Department of Water Resources

Project Location (include county): See Attachment 1 and Figure 1

Project Description:  
See Attachment 2

This is to advise that the California Department of Water Resources has approved the above  
( Lead Agency or  Responsible Agency)

described project on 12/21/2023 and has made the following determinations regarding the above  
(date)  
described project.

1. The project [ will  will not] have a significant effect on the environment.
2.  An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.  
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [ were  were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [ was  was not] adopted for this project.
5. A statement of Overriding Considerations [ was  was not] adopted for this project.
6. Findings [ were  were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

1516 9th St, Sacramento, CA 95814 or https://www.deltaconveyanceproject.com

Signature (Public Agency): karla Nemeth Title: Director

Date: 12/21/2023 Date Received for filing at OPR: 12/21/2023

## Attachment 1 **Project Location**

---

The project area consists of the construction footprint of the project facilities. The physical footprint of the Project would lie primarily within the boundaries of the statutorily defined Delta. Additionally, certain facilities that would be constructed under the Project would be located southeast of the statutory Delta (see Figure 1, Project Location).

California Department of Water Resources



Figure 1. Project Location

## Attachment 2

# Project Description

---

The Project consists of the construction, operation, and maintenance of new State Water Project (SWP) water diversion and conveyance facilities in the Delta that would be operated in coordination with the existing SWP facilities.

The Project would include the following key components and actions.

- Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that would include fish screens.
- 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.
- 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.
- Other ancillary facilities to support construction and operation of the conveyance facilities including, but not limited to, access roads, concrete batch plants, fuel stations, and power transmission and/or distribution lines.
- 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.

Volume 1, Chapter 3, *Description of the Proposed Project and Alternatives*, of the Final Environmental Impact Report (EIR) provides further information on the above components and actions and related activities required as part of the Project (e.g. park-and-ride lots).

The EIR evaluates Project operations based on the Project design and what was known and reasonably foreseeable when the EIR was prepared, but DWR acknowledges that: (1) operations will not occur for well over 15 to 20 years due, in part, to the time required to complete construction of the project, and (2) new information of substantial importance or substantial changes could occur with respect to Project design or the circumstances under which the Project is undertaken. Under these conditions, prior to the commencement of operations, DWR would evaluate whether subsequent CEQA review is required before undertaking any discretionary actions that may be required to change Project design or operational criteria such that they are sufficiently protective to environmental resources.

# Exhibit B

**DECISIONS REGARDING THE DELTA CONVEYANCE PROJECT FINAL  
ENVIRONMENTAL IMPACT REPORT  
SCH # 2020010227**

**A. CERTIFICATION OF THE FINAL EIR**

Prior to approving a project, the lead agency shall certify that:

- (1) The final EIR has been completed in compliance with CEQA.
- (2) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
- (3) The final EIR reflects the lead agency's independent judgment and analysis.

(CEQA Guidelines, § 15090(a).)

Pursuant to Public Resources Code Sections 21081 and 21082.1 and CEQA Guidelines Section 15090, and in my capacity as the person permitted by law to approve or disapprove the Project, I certify that I have been presented with the Final EIR (Exhibit A), that I have further considered all additional materials in the project files relevant to the DWR's compliance with CEQA or to its decision on the merits of the Project, and that I have reviewed and considered the information contained in the Final EIR prior to making this certification. I further certify that the Final EIR has been completed in compliance with CEQA and the CEQA Guidelines, and that the EIR reflects the independent judgment of DWR. Based upon the foregoing, I find and determine that the Final EIR provides the basis to take the actions in Section B, below, to approve the Project and adopt the (1) CEQA Findings, (2) Statement of Overriding Considerations, and (3) Mitigation Monitoring and Reporting Program.

Date: 12/21/2023

By: Karla Nemeth

Karla Nemeth, Director  
Department of Water Resources

Time: 11:08 am

**B. ADOPTION OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS,  
MITIGATION, MONITORING AND REPORTING PROGRAM AND EXECUTION OF A NOTICE OF  
DETERMINATION**

As explained further below and having received, reviewed and considered the Final EIR and other information in the record of proceedings, I hereby adopt the Findings and Statement of Overriding Considerations, attached as Exhibit B, the Mitigation Monitoring and Reporting Program, attached as Exhibit C, and approve the Project, and execute the Notice of Determination pursuant to CEQA, attached as Exhibit D.



### 1. Findings of Significant Effects and Statement of Overriding Considerations

CEQA Guidelines Section 15091(a) states: "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding."

CEQA Guidelines Section 15093(b) states: "When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record."

The Final EIR identifies potentially significant effects from the Project (Alternative 5), some of which may not be avoided or substantially lessened notwithstanding environmental commitments, avoidance and minimization measures, and feasible mitigation measures. Therefore, I adopt the Findings and Statement of Overriding Considerations, attached as Exhibit B, in order to meet the requirements of CEQA. To the extent that the Findings conclude that various mitigation measures are feasible and within DWR's responsibility and jurisdiction, I direct DWR to implement these measures, thereby incorporating them as part of the Project.

### 2. Mitigation, Monitoring and Reporting Program

CEQA Guidelines Section 15091(d) requires the lead agency to "also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects."

DWR has prepared a Mitigation Monitoring and Reporting Program for the Project (Alternative 5), attached as Exhibit C, that meets the requirements of CEQA Guidelines, section 15091. Therefore, in accordance with CEQA, I hereby adopt Exhibit C as a condition of the approval of the Project.

### 3. Project Approval and Execution of the Notice of Determination

I have determined that DWR has eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings under CEQA Guidelines, Section 15091 and attached hereto as Exhibit B. In addition, I have determined that any remaining significant effects on the environment found to be unavoidable under CEQA Guidelines section 15091 are acceptable due to overriding considerations described in Exhibit B, consistent with CEQA Guidelines Section 15093.

**Therefore, pursuant to CEQA Guidelines section 15092 and after considering the certified Final EIR, including all issues raised in comments on the Draft EIR and DWR’s responses thereto in the Final EIR as certified, and in conjunction with adopting the Findings, Statement of Overriding Considerations, and Mitigation and Monitoring Program under CEQA, I approve the California Delta Conveyance Project identified as Alternative 5 within the Final EIR and have executed the Notice of Determination, Exhibit D.**

Date: 12/21/2023

By: Karla Nemeth

Karla Nemeth, Director  
Department of Water Resources

Time: 11:08 am

Attachments:

- Exhibit A Final EIR (provided by link)
- Exhibit B Findings of Fact and Statement of Overriding Considerations
- Exhibit C Mitigation, Monitoring and Reporting Program
- Exhibit D Notice of Determination

# Exhibit C

## Description of the Proposed Project and Alternatives

---

### 3.1 Introduction

As described in Chapter 1, *Introduction*, the California Department of Water Resources (DWR), at the direction of Governor Gavin Newsom in Executive Order N-10-19, has inventoried and assessed approaches to modernize water conveyance through the Sacramento–San Joaquin Delta (Delta) and proposed a new, single-tunnel project. DWR has developed the basic project purpose and objectives described in Chapter 2, *Purpose and Project Objectives*, consistent with the Governor’s Executive Order.

The alternatives in this *Delta Conveyance Project Final Environmental Impact Report* (EIR), including the proposed project, meet the requirements of the California Environmental Quality Act (CEQA). This CEQA analysis is also intended to support compliance with other state and federal permit requirements where discussion of alternatives is relevant. As described in more detail in Section 3.2, *Alternatives Development Process*, and in Appendix 3A, *Identification of Water Conveyance Alternatives*, DWR considered all suggestions made during the scoping process as well as other information on the record to evaluate and screen potential alternatives to be analyzed in detail in this Final EIR.

For the Delta Conveyance Project (project), DWR is preparing a standalone EIR that will not be prepared jointly with a federal agency’s National Environmental Policy Act (NEPA) compliance document. As explained in Chapter 1, a separate Environmental Impact Statement (EIS) will be prepared to meet the requirements of NEPA, with the U.S. Army Corps of Engineers (USACE) as the lead agency. Because of this, care has been taken in this Final EIR to describe alternatives at a level of detail normally required for an EIS to ensure as much consistency as possible for these two documents. The Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 Code of Federal Regulations [CFR] § 1502.14) require all reasonable alternatives to be objectively evaluated in an EIS, so that each alternative is evaluated at an equal level of detail (40 CFR § 1502.14(b)).

The proposed project and alternatives evaluated in this Final EIR involve the construction and operation of new conveyance facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing State Water Project (SWP) and, potentially, to Central Valley Project (CVP) facilities in the south Delta, which would result in a dual-conveyance system in the Delta. This Final EIR also analyzes related amendments to the long-term water supply contracts that may be needed.

CEQA Guidelines also direct that “the specific alternative of ‘no project’ shall also be evaluated along with its impact” (14 Cal. Code Regs. § 15126.6 [e][1]). The No Project Alternative analysis is required to discuss existing conditions at the time the Notice of Preparation (NOP) is published, as well as “what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services” (14 Cal. Code Regs. § 15126.6 [e][2]). In this chapter, Section 3.5, *No Project Alternative*, describes the types of actions that Delta Conveyance Project participants other than DWR might undertake to address local supply issues under a long-term scenario in which the Delta Conveyance

1 Project is not approved or implemented. Because the effects of climate change and sea level rise are  
2 reasonably foreseeable, they are included in the No Project Alternative. Appendix 3C, *Defining*  
3 *Existing Conditions, No Project Alternative, and Cumulative Impact Conditions*, further details  
4 assumptions for the No Project Alternative.

5 This Final EIR provides the project-level analyses to disclose impacts required for approval of any of  
6 the alternatives and provides information to facilitate the proposed project permit decisions. This  
7 chapter describes the No Project Alternative and nine project alternatives (Table 3-2) that are  
8 evaluated in detail in this Final EIR. The project alternatives have been developed to best meet the  
9 project's basic purpose and objectives described in Chapter 2 and are the outcome of an extensive  
10 screening process summarized in Section 3.2, *Alternatives Development Process*, and Section 3.2.1,  
11 *Alternatives Screening Analysis*, and detailed in Appendix 3A, *Identification of Water Conveyance*  
12 *Alternatives*. Appendix 3A includes consideration of potential alternatives to the Delta Conveyance  
13 Project (project), alternatives identified during the public scoping process, and alternatives  
14 previously considered for the California WaterFix environmental review process.

15 Section 3.3, *Proposed Project and Alternatives Overview*, provides an overview of the proposed  
16 alignment and operational alternatives, and Section 3.4, *Common Features of the Alternatives*,  
17 describes the key facilities common to most of the alternatives and alignments. Sections 3.2, 3.3, and  
18 3.4 of this chapter discuss conveyance facilities. Section 3.5, *No Project Alternative*, describes the No  
19 Project Alternative. Sections 3.6 through 3.14 describe the characteristics that differentiate the nine  
20 project alternatives (Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, 4c, and 5). A discussion of maintenance is  
21 integrated into the sections describing major common features as relevant, and is not presented  
22 separately. Section 3.15, *Field Investigations*, describes past and future efforts to identify  
23 geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate  
24 construction methods and monitoring programs for final engineering design and construction.  
25 Additional actions not analyzed in this EIR associated with field investigations would comply with  
26 the necessary state environmental review requirements and may require additional CEQA review.

27 Section 3.16, *Intake Operations and Maintenance*, describes the conveyance facility operational  
28 criteria and assumptions. This Final EIR also considers the operation and maintenance of the SWP in  
29 relation to implementation of the project alternatives. Maintenance of these facilities is described  
30 and analyzed in cases where new types of maintenance would be required for new facilities. For the  
31 7,500-cubic-feet-per-second (cfs) Alternatives 2a and 4a that would involve the CVP, those  
32 operations and any maintenance of those facilities are also analyzed.

33 Section 3.17, *Real-Time Operational Decision-Making Process*, describes the real-time operations  
34 decision-making process under current operations and how it would operate with the project  
35 alternatives. Section 3.18, *Adaptive Management and Monitoring Program*, briefly describes adaptive  
36 management and monitoring that would occur under the project.

37 The Community Benefits Program, proposed as part of the project, is introduced in Section 3.19 and  
38 described more fully in Appendix 3G, *Community Benefits Program Framework*. The Community  
39 Benefits Program could provide funding for actions that are described in broad general categories  
40 that could be funded but no action has yet been identified. Accordingly, the analysis of the potential  
41 impacts of those actions is at a commensurate general level and is provided in Chapter 34,  
42 *Community Benefits Program Analysis*, of this Final EIR. Because significance determinations  
43 regarding specific Community Benefits Program actions would be speculative, none are provided. As

### 3.14 Alternative 5—Bethany Reservoir Alignment, 6,000 cfs, Intakes B and C (Proposed Project)

Alternative 5 would use Intakes B and C to convey up to 6,000 cfs of water from the north Delta along the eastern alignment as described under Alternative 3 as far as the launch shaft at Lower Roberts Island. From Lower Roberts Island, the tunnel would follow a different route to a location south of Clifton Court Forebay and terminate at the Bethany Complex. This tunnel alignment is referred to as the Bethany Reservoir alignment. Figures 3-2c and 3-30 provide, respectively, a map and a schematic diagram depicting the alignment and conveyance facilities associated with Alternative 5. Mapbook 3-3 depicts the locations of Bethany Reservoir alignment project facilities and major construction features.

From the Twin Cities Complex, the Bethany Reservoir alignment would extend along the same easterly route as Alternative 3, using the same tunnel shaft locations as far as Lower Roberts Island, where the corridor would turn southwest, traveling from Lower Roberts Island under Lower and Upper Jones Tracts, Victoria Island, Union Island, Coney Island, and Clifton Court Tract to the Surge Basin reception shaft. Tunnel shafts would be located at the following sites.

- Intake B
- Intake C
- Twin Cities Complex Double Launch Shaft
- New Hope Tract maintenance shaft (eastern)
- Canal Ranch Tract maintenance shaft
- Terminous Tract reception shaft
- King Island maintenance shaft
- Lower Roberts Island double launch shaft
- Upper Jones Tract maintenance shaft (Bethany)
- Union Island maintenance shaft
- Surge Basin reception shaft (at Bethany Complex)

Alternative 5 would eliminate the Southern Complex facilities described in Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c. Instead, this alternative would include a new Bethany Reservoir Pumping Plant and Surge Basin to the south of Clifton Court Forebay, and the new Bethany Reservoir Aqueduct that would convey flows to a new Bethany Reservoir Discharge Structure on the shore of Bethany Reservoir. The aqueduct would consist of four pipelines including tunneled segments under the existing CVP Jones Pumping Plant discharge pipelines and existing conservation easement adjacent to Bethany Reservoir. Collectively, these facilities are called the Bethany Complex, described in Section 3.14.1, *Bethany Complex*.

The tunnel from the intakes to the Bethany Complex would have an inside diameter of 36 feet and outside diameter of 39 feet and extend 45 miles from the intakes to the surge basin at the Bethany Reservoir Pumping Plant. Alternative 5 would have the same tunnel shafts as described under Alternative 3 from the north Delta to Lower Roberts Island. Lower Roberts Island would have a double launch shaft, similar to that at the Twin Cities Complex, which would allow one TBM to bore

1 north to the Terminous Tract reception shaft and one to bore south toward the final reception shaft  
2 at the Bethany Reservoir Surge Basin via maintenance shafts on Upper Jones Tract (at a different  
3 location than under Alternative 3) and on Union Island. The maintenance shaft site on Upper Jones  
4 Tract would require a different access road than under Alternative 3 because it is in a different  
5 location. The Union Island maintenance shaft would be unique to Alternative 5. Construction access  
6 to Union Island would be via Bonetti Road. The shaft pads at Upper Jones Tract and Union Island  
7 tunnel maintenance shafts would be constructed of soil excavated from Lower Roberts Island.  
8 Because the Southern Forebay, Southern Complex, and South Delta Conveyance Facilities are not  
9 included in this alternative, the shafts associated with those features would not be needed.

10 The Twin Cities Complex under the Bethany Reservoir alignment (Alternative 5) would be similar to  
11 Alternative 3, but larger because RTM that would be used or stored at the Southern Complex under  
12 other alternatives would not be transported to that site and would need to be stored on-site instead.  
13 Tunnel segments, TBM machinery, other soil materials, and equipment would be delivered to the  
14 Twin Cities Complex by road; there would be no rail-served materials depot at the Twin Cities  
15 Complex under Alternative 5. Access road modifications, RTM storage, and facility layouts would  
16 change accordingly. RTM handling at the Twin Cities Complex and Lower Roberts Island TBM launch  
17 shafts would be the same as described for the eastern alignment alternatives (Alternatives 3, 4a, 4b,  
18 and 4c), except that mechanical dryers would not be used at Lower Roberts Island and no RTM  
19 would be transported for forebay construction.

20 The double launch shaft at Lower Roberts Island would require a larger shaft site than under  
21 Alternative 3 constructed in a figure eight configuration to accommodate two TBMs, larger RTM  
22 storage area, and corresponding adjustments to access roads and railroad alignments. Material  
23 excavated on-site would be used to construct the shaft pad. The site would also house a rail-served  
24 materials depot similar to the facility described under Alternative 3. Rail access to Lower Roberts  
25 Island would be provided from existing UPRR and/or BNSF tracks at the Port of Stockton. Rail lines  
26 could be extended from one of the existing rail facilities at the Port of Stockton. Rail access would be  
27 extended over a new bridge over Burns Cut and continue to the launch shaft site and RTM storage  
28 area.

29 Portions of existing perimeter levee on the Lower Roberts Island site do not comply with the Public  
30 Law 84-99 Delta-specific levee design standard because of insufficient freeboard or slopes. Levee  
31 modifications for this alternative would be made as described for Alternative 3, described in Section  
32 3.10.

33 Table 3-13 summarizes the distinguishing characteristics of Alternative 5.

34 **Table 3-13. Summary of Distinguishing Physical Characteristics of Alternative 5**

Characteristic	Description <sup>a</sup>
Alignment	Bethany Reservoir
Conveyance capacity	6,000 cubic feet per second
<b>Number of Intakes</b>	2; Intakes B and C at 3,000 cfs each
<b>Tunnel from Intakes to Bethany Reservoir Pumping Plant</b>	
Diameter	36 feet inside, 39 feet outside
Length	45 miles
Number of tunnel shafts	11 <sup>b</sup>

Characteristic	Description <sup>a</sup>
Launch shafts diameter	115 feet inside
Reception and maintenance shafts diameter	70 feet inside
Surge Basin reception shaft diameter	120 feet inside
Twin Cities Complex	Construction acres: 586 Permanent acres: 222
Lower Roberts Island Double Launch Shaft site	Construction acres: 610 Permanent acres: 300
Upper Jones Tract Maintenance Shaft <sup>c</sup>	Construction acres: 11 Permanent acres: 11
Union Island Maintenance Shaft <sup>c</sup>	Construction acres: 14 Permanent acres: 14
<b>Bethany Complex</b>	
Bethany Reservoir Pumping Plant and Surge Basin site size (all facilities)	Construction acres: 213 Permanent acres: 184
Bethany Reservoir Pumping Plant pad site	1,166 foot wide x 1,260 feet long (approximately 34 acres)
Surge basin	815 feet wide x 815 feet long x 35 feet deep, approximately 15 acres
Bethany Reservoir Aqueduct	Four 15-foot-diameter parallel below-ground pipelines Approximately 14,900 linear feet each Construction acres: 128 acres Permanent acres: 68
Aqueduct tunnels	Four 20-foot-diameter parallel tunnels, two reaches
Bethany Reservoir Discharge Structure	Construction acres: 15 Permanent acres: 13
<b>RTM Volumes and Storage</b>	
Twin Cities Complex long-term RTM storage (approximate)	214 acres x 15 feet high
Lower Roberts Island long-term RTM storage (approximate)	189 acres x 15 feet high
Bethany Complex	No TBM RTM generated or stored
Total wet excavated RTM volume (for single main tunnel from intakes to Bethany Reservoir Surge Basin shaft)	14.4 million cubic yards

1 cfs = cubic feet per second; RTM = reusable tunnel material; TBM = tunnel boring machine. The height of the RTM storage  
2 stockpiles would decrease as the RTM subsides into the ground over time.

3 <sup>a</sup> Acreage estimates represent the permanent surface footprints of selected facilities. Overall project acreage includes  
4 some facilities not listed, such as permanent access roads.

5 <sup>b</sup> Number of shafts for the main tunnel from intakes to Bethany Reservoir Surge Basin shaft, counting the double shaft at  
6 Twin Cities Complex and the double shaft at Lower Roberts Island each as one shaft.

7 <sup>c</sup> These maintenance shafts are included in this table because they are distinctive to the Bethany Reservoir alignment.  
8 Upper Jones Tract maintenance shaft is in a different location than in other eastern alignment alternatives and Union  
9 Island maintenance shaft is unique to this alternative.

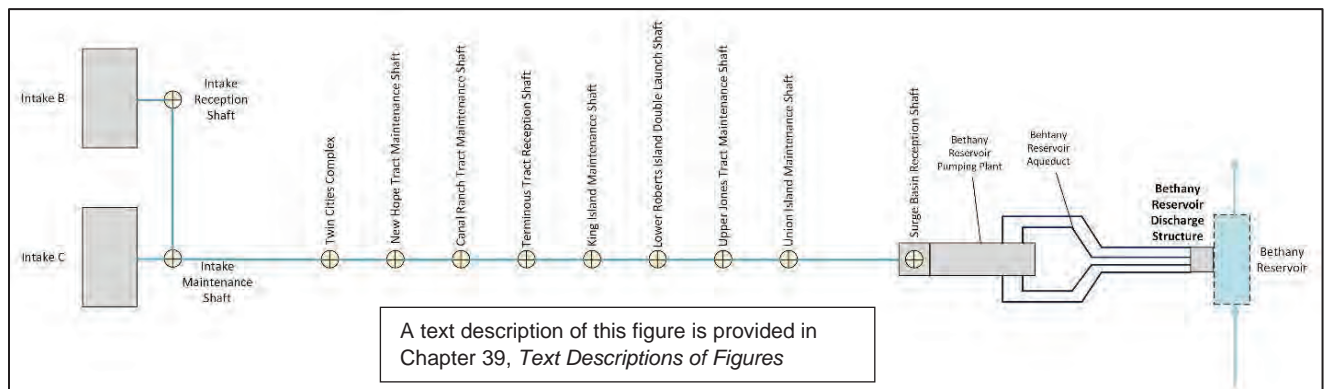
10



1 Characteristics of fencing and lighting at intakes, tunnel shaft sites, Bethany Reservoir Pumping  
 2 Plant and Surge Basin, and Bethany Reservoir Discharge Structure during construction and  
 3 operation would be the same as described in Section 3.4.12, *Fencing and Lighting*. These features  
 4 would also be the same at the Bethany Complex during aqueduct construction, but once operational,  
 5 the aqueduct would require only gates at access points along county roads.

6 The power and SCADA alignment for all facilities north of the Lower Roberts Island double launch  
 7 shaft and two new park-and-ride lots—Hood-Franklin and Charter Way—would be the same as  
 8 under Alternative 3. A new electrical power substation at Lower Roberts Island would be in a  
 9 slightly different location than under Alternative 3. The two maintenance shafts between Lower  
 10 Roberts Island and the Bethany Complex would require different electric power connections than  
 11 under Alternative 3. Electric power lines for the Bethany Complex would be primarily aboveground  
 12 on new poles and a few towers.

13 SCADA facilities for the Bethany Reservoir alignment and Bethany Complex would be controlled  
 14 through three operations centers, including one that would be installed at the Bethany Reservoir  
 15 Pumping Plant.  
 16



17  
 18 **Figure 3-30. Alternative 5 Bethany Reservoir Alignment Schematic**

19 RTM would be generated by boring the main tunnel north of the Bethany Complex, but excavation  
 20 for the Bethany Reservoir Pumping Plant, Aqueduct, and Discharge Structure would not require the  
 21 use of a TBM and would not generate the same type of RTM. Spoil material from construction of the  
 22 aqueduct would be placed on top of and adjacent to the aqueduct for permanent storage or placed in  
 23 the excess excavated material stockpile near the Bethany Reservoir Pumping Plant.

24 RTM generated at the Twin Cities Complex and Lower Roberts Island launch shafts sites would be  
 25 processed and reused at the launch shaft sites to backfill borrow areas. Approximately 40 acres of  
 26 excavated areas within the limits of the permanent RTM stockpile at Twin Cities and 26 acres at  
 27 Lower Roberts Island would be filled with RTM to raise the elevation to existing ground levels.  
 28 Surplus RTM would be stockpiled on-site for future uses by DWR. Alternative 5 is expected to  
 29 generate 14.4 million cubic yards of wet excavated RTM—6.7 million cubic yards at Twin Cities  
 30 Complex and 7.7 million cubic yards at Lower Roberts Island.

31 Excess excavated soil from construction of the surge basin, pumping plant, and aqueduct would be  
 32 used on-site for grading as much as possible. Excess topsoil and excavation material would be  
 33 stockpiled at five locations at the Bethany Complex (Delta Conveyance Design and Construction  
 34 Authority 2023b). A permanent 33-foot high stockpile of excavated material from the Bethany

1 Reservoir Pumping Plant and Surge Basin would occupy about 70 acres(Delta Conveyance Design  
2 and Construction Authority 2023b). The stockpile area would be cleared, grubbed, and stripped of  
3 topsoil before stockpiling. Soil from this location and excess soil from other portions of the Bethany  
4 Complex would be spread over the completed stockpiles and hydroseeded.

5 The two concrete batch plants at Lambert Road proposed for Alternative 3 would serve construction  
6 of the intakes, Twin Cities Complex, New Hope Tract, Canal Ranch Tract, and King Island. Concrete  
7 for Terminous Tract, Lower Roberts Island, Upper Jones Tract, and Union Island tunnel shafts would  
8 come from existing local concrete suppliers from the Sacramento or Stockton areas. Another two  
9 concrete batch plants at the Bethany Reservoir Pumping Plant and Surge Basin would serve  
10 construction of all portions of the Bethany Complex. They would occupy about 11.5 acres north of  
11 Kelso Road, adjacent to the contractor’s yard behind the pumping plant (Delta Conveyance Design  
12 and Construction Authority 2023b). Each batch plant site would be approximately 330 feet wide by  
13 330 feet long with a 50- to 75-foot-tall batch plant that would include three bulk cement storage  
14 silos, a portable cement silo, a 500-square-foot batch trailer, propane and diesel fuel tanks, a  
15 reclaimed water system and related collection facilities for stormwater and wash water, and dust  
16 collectors to minimize particulate matter in the air. Filtered particulates would be hauled to licensed  
17 off-site disposal facilities or added to raw materials used to produce concrete. The batch plants  
18 would be removed after construction.

19 Alternative 5 would include only the Hood-Franklin Park-and-Ride Lot and Charter Way Park-and-  
20 Ride Lot presented under Alternative 3. On-site parking would be provided at the Twin Cities  
21 Complex, Lower Roberts Island construction sites, all maintenance and reception shafts, and  
22 Bethany Complex.

23 One 4,000-gallon diesel tank and one 4,000-gallon gasoline tank would be present at the Bethany  
24 Reservoir Pumping Plant and Surge Basin during construction. Both tanks would be elevated and  
25 inside fully contained fueling areas. Fuel stations along the main tunnel alignment would be the  
26 same as under Alternative 3.

27 Emergency response facilities for the Bethany Complex would be located just south of the Bethany  
28 Reservoir Pumping Plant and Surge Basin, near the aqueduct alignment. Facilities would include two  
29 ambulances; fire, rescue, and medical equipment; accommodations for one full-time crew during  
30 work hours; and a helipad for emergency evacuations. Emergency personnel could include  
31 construction management staff that would be cross-trained.

32 Water supplies and water treatment, storage, and drainage strategies would be similar to those  
33 described in Section 3.4.15.5 and subject to the same water rights and limitations. At the Bethany  
34 Reservoir Pumping Plant and Surge Basin, some water would be supplied from the California  
35 Aqueduct. Bethany Reservoir Aqueduct construction activities would move along the alignment over  
36 57 months of construction. Accordingly, water supplies would have to be hauled to each progressive  
37 construction site. These supplies would also come from the connection to the California Aqueduct at  
38 the Bethany Reservoir Pumping Plant site.

39 Water for the discharge structure construction site would be pumped from the Bethany Reservoir.  
40 All dewatering flows would receive treatment to reduce concentrations of constituents such as  
41 boron in the groundwater, and be discharged to local channels or Bethany Reservoir.

42 Water supplies for access road construction would be hauled from nearby fill stations. Runoff from  
43 the construction site would be contained by portable berms and tested. Berms and other barriers

1 around the site would contain stormwater runoff before testing to confirm compliance with the  
2 project's SWPPP. If found compliant, runoff would be directed to adjacent stormwater ditches or  
3 storm drains. It is expected that stormwater runoff volumes from road construction would be  
4 similar to existing conditions.

### 5 **3.14.1 Bethany Complex**

6 The Bethany Complex would be constructed southeast of Clifton Court Forebay. The Bethany  
7 Reservoir Pumping Plant and Surge Basin would be located along Mountain House Road  
8 approximately 0.5 miles south of the intersection with Byron Highway (Figure 3-31). The Bethany  
9 Reservoir Aqueduct would extend approximately 2.8 miles from the pumping plant to a new  
10 discharge structure on the banks of the Bethany Reservoir (Figure 3-32). Approximately 35 acres,  
11 located within the proposed footprint Bethany Complex and adjacent to the Bethany Reservoir  
12 Pumping Plant and Surge Basin facilities, would not be acquired by DWR and remain undisturbed.  
13 The Bethany Complex, including the pump facilities, surge basin, electrical substation, and other  
14 appurtenant facilities, would be approximately 215 acres. The facilities that comprise the Bethany  
15 Complex are described in the following sections. The Bethany Complex would be located on ground  
16 above the flood elevations for the 200-year flood event with sea level rise and climate change  
17 hydrology for year 2100, as defined by DWR (Delta Conveyance Design and Construction Authority  
18 2023b).

#### 19 **3.14.1.1 Bethany Reservoir Pumping Plant**

20 The Bethany Reservoir Pumping Plant would be needed to lift the water from the tunnel to Bethany  
21 Reservoir. The main tunnel from the intakes would terminate at a reception shaft within the surge  
22 basin on the north side of the Bethany Reservoir Pumping Plant. Water would enter the Bethany  
23 Reservoir Pumping Plant and be conveyed directly to Bethany Reservoir in a cement-mortar-lined,  
24 welded steel aqueduct system (described in Section 3.14.1.3, *Bethany Reservoir Aqueduct*).

25 The Bethany Reservoir Pumping Plant would be a multilevel underground structure with its roof at  
26 grade. Flow capacity would range from a minimum of 300 cfs to a maximum of 6,000 cfs. The  
27 pumping plant would have twelve 500-cfs pumps to achieve the flow of 6,000 cfs and two standby  
28 pumps. In addition to the below-ground pumping plant and wet well, the site would include  
29 aboveground water storage tanks for hydraulic transient-surge protection of the discharge  
30 pipelines, electrical building with variable speed drives and switchgear, heating and air conditioning  
31 mechanical equipment yard, transformer yard, electrical substation adjacent to the electrical  
32 building, standby engine generator building with an isolated and fully contained fuel tank,  
33 equipment storage building with drive-through access, offices, shops, storage area for spare  
34 aqueduct pipe sections and accessories, and a walled enclosure/storage facility for bulkhead panel  
35 gates that would be used to isolate portions of the Bethany Reservoir Pumping Plant during  
36 maintenance procedures. The pumping plant would include two separate dry-pit pump bays  
37 adjacent to the wet well.

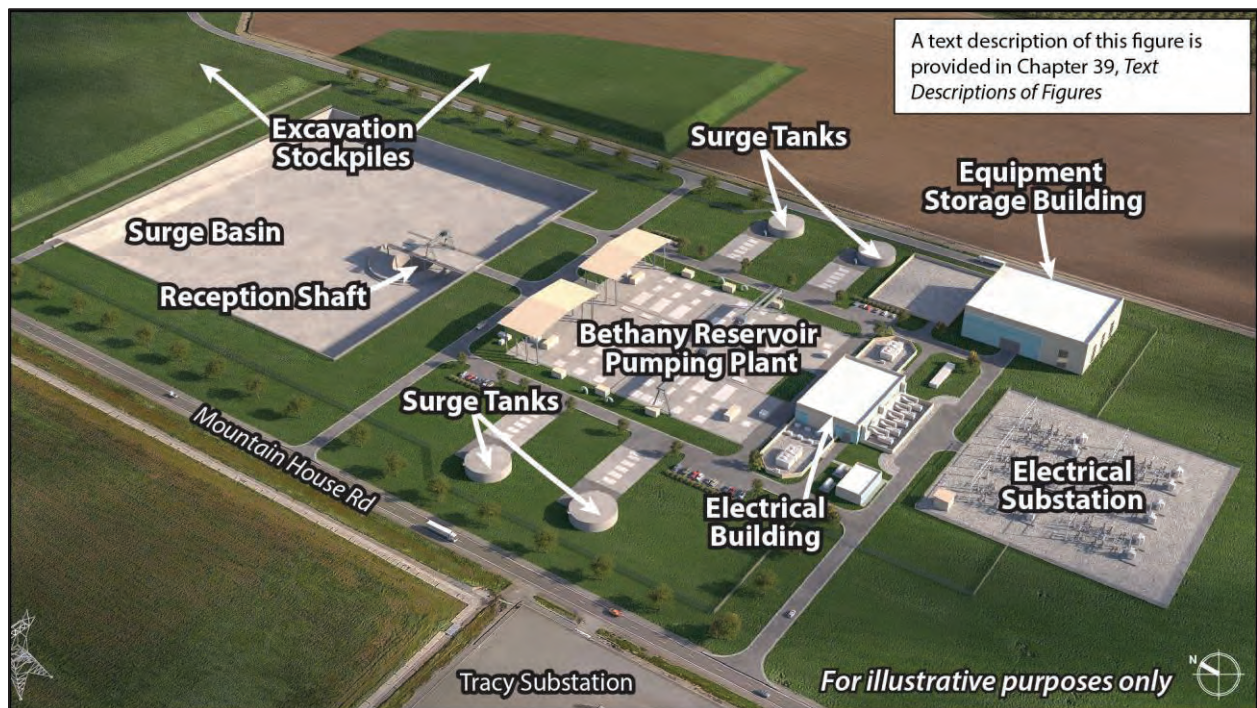
38 Electrical, generator, and maintenance buildings, an electrical substation, surge tanks, and  
39 protective canopies on the site would be aboveground structures (Figure 3-31). The finished site  
40 pad elevation of 46.5 feet above mean sea level, at about existing grade, would be substantially  
41 above the elevation required to protect the facilities from surge events and the 200-year flood event  
42 including sea level rise in 2100, which is calculated to be a water surface elevation of 27.3 feet  
43 within the surge basin.

1 **3.14.1.2 Bethany Reservoir Surge Basin**

2 The surge basin would normally be empty when the Bethany Reservoir Pumping Plant is in  
 3 operation. The top of the surge basin would be at existing grade and the bottom would be about 35  
 4 feet below the ground surface. The tunnel shaft within the surge basin would accommodate portable  
 5 submersible pumps for dewatering the tunnel, if necessary. The top of the tunnel shaft would be at  
 6 the floor of the surge basin and would be surrounded by an overflow weir wall inside the basin. A  
 7 shaft pad would not be required at the surge basin reception shaft since natural ground elevations at  
 8 this site are considerably above the potential flood stage, and groundwater intrusion is unlikely  
 9 based on available information.

10 Under rare circumstances, potential transient-surge conditions could occur in the main tunnel  
 11 between the intakes and Bethany Reservoir Pumping Plant or in the Bethany Reservoir Aqueduct.  
 12 Along the main tunnel, the transient surge could occur if there was a simultaneous shutdown of the  
 13 main raw water pumps in the pumping plant. Under Alternative 5, the surge flows would discharge  
 14 into the surge basin through the tunnel reception shaft. The circular weir wall around the top of the  
 15 tunnel reception shaft (Figure 3-31) would allow the overflows to enter the surge basin but prevent  
 16 water that enters the surge basin from reentering the main tunnel unless DWR operators open gates  
 17 to allow the water to flow back in. The surge basin would also have pumps to remove the water  
 18 more rapidly than gravity flow into the pumping plant to facilitate restarting the pumping plant  
 19 after a surge event.

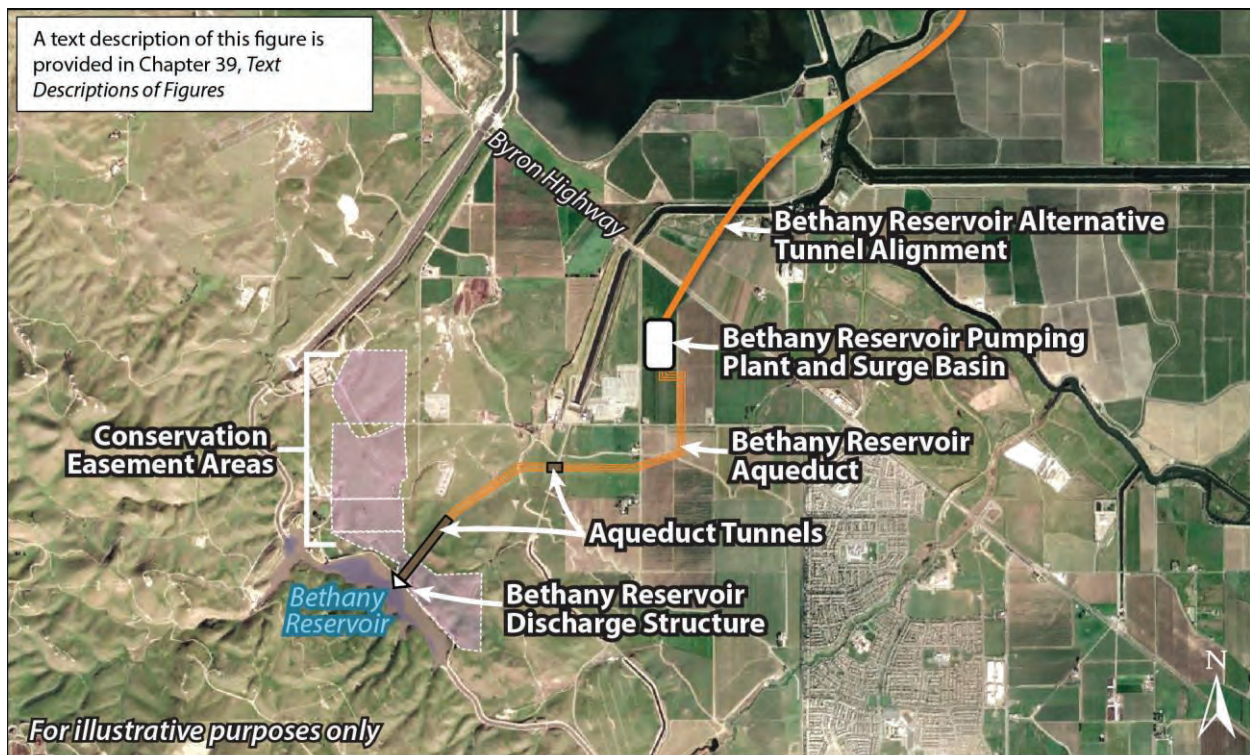
20 Transient-surge conditions in the Bethany Reservoir Aqueduct pipeline could also occur if there was  
 21 a simultaneous shutdown of the Bethany Reservoir Pumping Plant pumps. Under this transient-  
 22 surge scenario, water would flow from surge tanks located at the Bethany Reservoir Pumping Plant  
 23 into the aqueduct pipelines and excess surge flows would be conveyed into Bethany Reservoir.  
 24



25  
 26 **Figure 3-31. Bethany Reservoir Pumping Plant and Surge Basin**

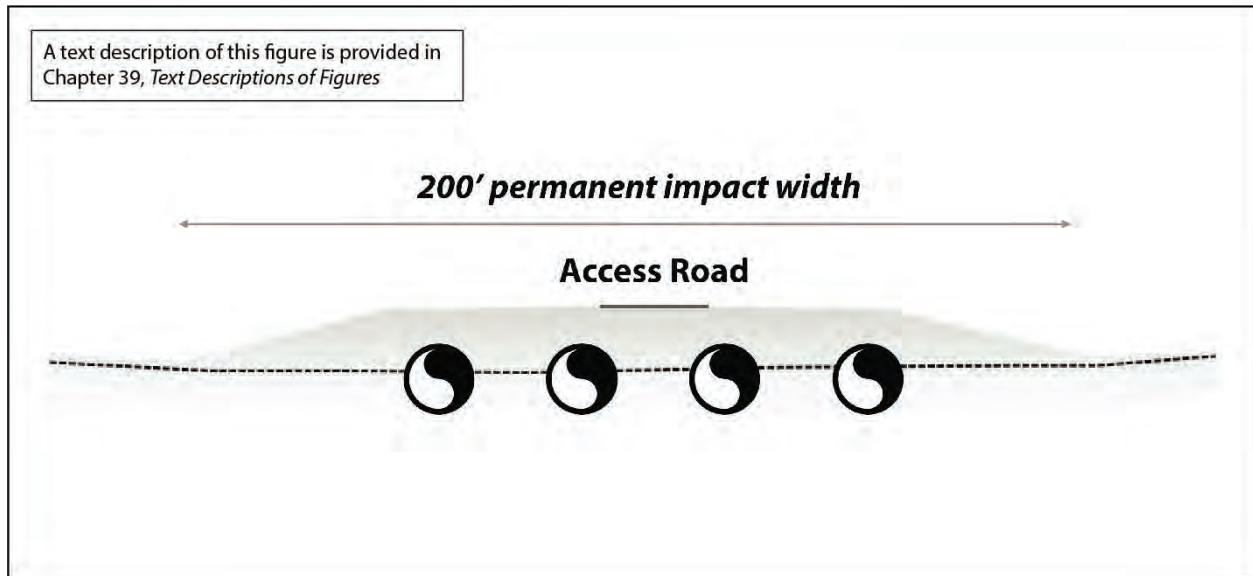
### 1 3.14.1.3 Bethany Reservoir Aqueduct

2 The aqueduct system would consist of four 15-foot-diameter parallel pipelines that would convey  
 3 water from the Bethany Reservoir Pumping Plant to the Bethany Reservoir Discharge Structure, a  
 4 distance of approximately 2.8 miles each. Each pipeline would have a maximum capacity of 1,500  
 5 cfs. The permanent footprint of the aqueduct system would be about 200 feet wide. Two separate  
 6 aqueduct reaches would require tunnels to carry each pipeline under existing features. The first  
 7 reach would be under the Jones Pumping Plant discharge pipelines (about halfway from the Bethany  
 8 Reservoir Pumping Plant to the discharge structure); at this location pipelines would run about 50  
 9 feet below ground surface for about 200 feet. Tunnels would also be needed under the existing  
 10 conservation easement adjacent to Bethany Reservoir (at the last downstream reach of the  
 11 aqueduct; Figure 3-32) for about 3,064 feet, ranging from 45 to 180 feet below ground surface.



12  
 13 **Figure 3-32. Bethany Reservoir Aqueduct Route with Tunnel Reaches**

14 The aqueduct pipelines would be laid mostly in open trenches, constructed by open cut and backfill  
 15 methods. The tops of the pipes would extend above the existing ground surface and be covered by a  
 16 minimum of 6 feet of soil that would form a single mound of earth above the four pipelines (Figure  
 17 3-33). Excavated material from the Bethany Reservoir Aqueduct trenches and tunnels would be  
 18 used for backfill of the trenches and also used to make controlled low-strength backfill material  
 19 (CLSM) for pipe bedding and zone material.



**Figure 3-33. Typical Completed Section for Open Cut Reaches of Pipeline Alignment**

The aqueduct pipelines would terminate near the bottom of four 55-foot-inside-diameter below-ground vertical shafts at the Bethany Reservoir Discharge Structure. The pipelines would make a 90-degree bend upward inside the shafts, ending at the floor of the discharge structure and flowing through a concrete channel into Bethany Reservoir (Figure 3-34). Bethany Reservoir serves several purposes: a forebay for the South Bay Pumping Plant (the start of the South Bay Aqueduct of the State Water Project), an afterbay for Banks Pumping Plant, a conveyance facility for the California Aqueduct, and a recreational facility. The reservoir does not serve as a storage reservoir.

In addition to pipelines and tunnels, the aqueduct construction site would include contractor staging areas, CLSM batch plants, and ancillary facilities. The CLSM would be used to improve the strength of soil placed under the aqueduct pipes installed in the trenches, and possibly to fill the space between the inside wall of the tunnel and the outside of the pipeline wall for the tunnels that carry the pipelines below the Jones discharge pipelines and the conservation easement adjacent to Bethany Reservoir.

A CLSM processing area along the tunnel portion of the aqueduct would include two side-by-side CLSM batch plants for trench work, each 100 feet wide by 100 feet long and 50 to 75 feet tall. CLSM production would also require 2.75 acres for soil storage of up to 30,000 cubic yards of soil up to 7 feet deep; two 30-foot-diameter, 10-foot-tall water storage tanks mounted on 8-foot-tall platforms and holding a total of 100,000 gallons of water; and cement storage silos 50 to 75 feet tall on a site 50 feet wide by 100 feet long.

## Aqueduct Tunnels

The aqueduct tunnels to carry the pipelines under the Jones discharge pipelines and the conservation easement would be constructed using a different method than that used for the main tunnel between the intakes and the Bethany Reservoir Pumping Plant. Because of the shorter length of these tunnels compared to the main tunnel, a TBM would not be used during construction. For the Jones pipeline crossing, a digger shield outfitted with an excavator arm could be used for the anticipated ground conditions. To avoid extensive disturbance of sensitive habitat areas within the

1 conservation easement crossing, several excavation methods have been identified including a  
2 roadheader. Soil material would be moved out of the tunnels at the entry portals. The excavation  
3 would be supported with rock reinforcement and/or steel ribs or lattice girders and shotcrete  
4 depending on the ground conditions.

5 The excavated material from the aqueduct tunnels would be removed by different methods and  
6 would be in different geologic formations compared to the main tunnel bore; therefore, the  
7 excavated material characteristics would be different from the RTM from the main tunnel. The  
8 Bethany Reservoir Aqueduct tunneling machines also would not need additives; therefore, the  
9 excavated soil would not need to undergo the extensive drying that would be required for RTM from  
10 the TBMs on the main tunnel. Materials excavated from the aqueduct tunnels that are too wet or  
11 otherwise unsuitable for CLSM or backfill would be transported to the permanent excavation  
12 stockpile adjacent to the Bethany Reservoir Pumping Plant and dried as part of final disposal.

13 Tunneling under the Jones discharge pipelines would require excavation of a large cut to establish  
14 entry and exit portals. The entry portal would be located on the east side of the Jones discharge  
15 pipeline crossings. Excavation of these tunnels would end at the exit portal about 200 feet away on  
16 the west side of the Jones pipelines. Major facilities at the site would include mobile cranes,  
17 construction shops and offices, parking, material laydown and erection area, equipment staging,  
18 tunnel ventilation system housing, temporary electrical substation, and storage for topsoil stripping.  
19 Construction activities would include clearing and grubbing, water quality protection, ground  
20 improvement, and other activities as needed.

21 Tunneling under the conservation easement also would require tunnel entry portals on the east side  
22 and tunnel exit portals on the west side of the 3,064-foot crossing. The entry portals would be  
23 located on the east side of the conservation easement and west of the existing high voltage power  
24 lines. Excavation of these tunnels would end at the vertical shafts, serving as the exit portal, on the  
25 east side of the Bethany Reservoir Discharge Structure.

#### 26 **3.14.1.4 Bethany Reservoir Discharge Structure**

27 This discharge structure portion of the Bethany Complex comprises the structure itself near the  
28 bank of Bethany Reservoir, the aqueduct conservation easement tunnel vertical exit shafts,  
29 contractor staging areas, and ancillary facilities. The proposed discharge structure site would be on  
30 a narrow strip of land between the conservation easement and Bethany Reservoir; a 10-foot-wide  
31 buffer would separate the disturbance area from the conservation easement. Significant grading  
32 would be required to build the structure on the site, which is above reservoir surface water level but  
33 varies considerably in elevation. Constructing a temporary cofferdam within the water near the  
34 shore in the reservoir would allow excavation, concrete, and backfill work to be completed on the  
35 reservoir bank within an area of dry ground excavated as much as 25 feet below the reservoir water  
36 surface.

37 The discharge structure would occupy 13 acres postconstruction. It would be divided into four  
38 separate channels, with a total width of approximately 327 feet encompassing the four 55-foot-wide  
39 aqueduct shafts with required approximately 81.5-foot center-to-center spacing (Figure 3-34). Each  
40 channel of the discharge structure would taper from about 81 feet wide at the top of the aqueduct  
41 shafts to approximately half of that width at the bank of the Bethany Reservoir. The concrete floor of  
42 the discharge structure at elevation 227.0 feet above mean sea level would end near the reservoir  
43 bank, and a layer of riprap would be placed between the structure and the temporary cofferdam to

1 help stabilize and protect the bank and bed of the reservoir from the energy of the water being  
 2 discharged, which is expected to be minor, given the relatively low discharge velocity. The top of the  
 3 discharge would be approximately at the same elevation as the existing California Aqueduct  
 4 Bikeway, which would be modified to traverse through and over the new structure.



5  
 6 **Figure 3-34. Bethany Reservoir Discharge Structure**

7 The Bethany Reservoir Discharge Structure would cross the existing California Aqueduct Bikeway,  
 8 which is also used as a maintenance road. A 32-foot-wide bridge would span the four Bethany  
 9 Reservoir Discharge Structure channels to maintain access for bikes and maintenance vehicles. Each  
 10 of the four channels would be divided into two 21-foot-wide bays with radial gates and stop logs to  
 11 prevent backflow in an emergency and to doubly isolate the aqueduct system from Bethany  
 12 Reservoir. A 16-foot-wide service deck would be installed on the opposite (reservoir) side of the  
 13 gate and stop log area to facilitate operations and maintenance of the gates and installation and  
 14 removal of stop logs. The bridge would include applicable openings for stop log installation and  
 15 removal through traffic-rated hatches. Similarly, stop logs would be installed in open stop log  
 16 grooves adjacent to the service deck. The radial gates would automatically close under pressure-loss  
 17 conditions in the aqueduct pipelines to prevent water from Bethany Reservoir from flowing into the  
 18 aqueduct pipelines during the unlikely event of a pipeline break or valve malfunction. Due to the  
 19 critical control nature of this facility, a standby engine generator would be provided for backup  
 20 power in case of a power outage. A storage yard for isolation bulkhead gates is also included at the  
 21 site.

### 22 **3.14.2 Access Roads**

23 Access roads to the intakes, New Hope Tract tunnel maintenance shaft, Canal Ranch Tract tunnel  
 24 maintenance shaft, Terminous Tract tunnel reception shaft, King Island tunnel maintenance shaft,  
 25 and Lower Roberts Island dual launch shaft site would be the same under Alternative 5 as under



1 Alternative 3. Road improvements for the Twin Cities Complex would be slightly different than  
2 under Alternative 3 and are described in Section 3.4.7. Access to the Union Island maintenance shaft  
3 (unique to Alternative 5) would be via Clifton Court Road and Bonetti Road; these roads would not  
4 require project modifications.

5 Access to the Bethany Reservoir Pumping Plant would be from the Byron Highway immediately  
6 north of the site, at a new interchange constructed at Lindemann Road. Byron Highway would be  
7 realigned and widened to four lanes for 0.5 mile from the new Lindemann Road interchange to Great  
8 Valley Parkway. New bridges would be built over UPRR tracks and Byron Highway. A new 1.2-mile  
9 paved frontage road would be constructed for the Lindemann Road interchange parallel to the  
10 Byron Highway on the southern side, extending south into the site. This new frontage road would  
11 also connect to Byron Highway at the existing Mountain House Road intersection. A new 2.1-mile  
12 paved road would provide access to the surge basin between new Byron Highway frontage road and  
13 Mountain House Road. Mountain House Road would be widened for 1.34 miles between Byron  
14 Highway and Connector Road.

15 The pumping plant and surge basin would also be accessible from I-580, located approximately 3  
16 miles south of the site, via West Grant Line Road and Mountain House Road. Improvements to Kelso  
17 Road would provide roadway connections to Mountain House Road and the new north-south access  
18 road along the site's southern side. A merge lane on West Grant Line Road would be widened for  
19 0.14 mile west of Mountain House Road to Mountain House Road. Mountain House Road would be  
20 extended by 0.6 mile to West Grant Line, including a new roundabout at Grant Line Road and a new  
21 bridge over a swale. Mountain House Road would be widened for 2.2 miles from the new extension  
22 to a point 0.18 mile north of the surge basin access road.

23 The Bethany Reservoir Aqueduct would require widening 1.23 miles of Kelso Road between a  
24 location 0.14 mile east of Mountain House Road and the new access road to the aqueduct  
25 construction staging area, and a new 0.27 mile paved road extension of Connector Road from  
26 Mountain House Road to the surge basin access road.

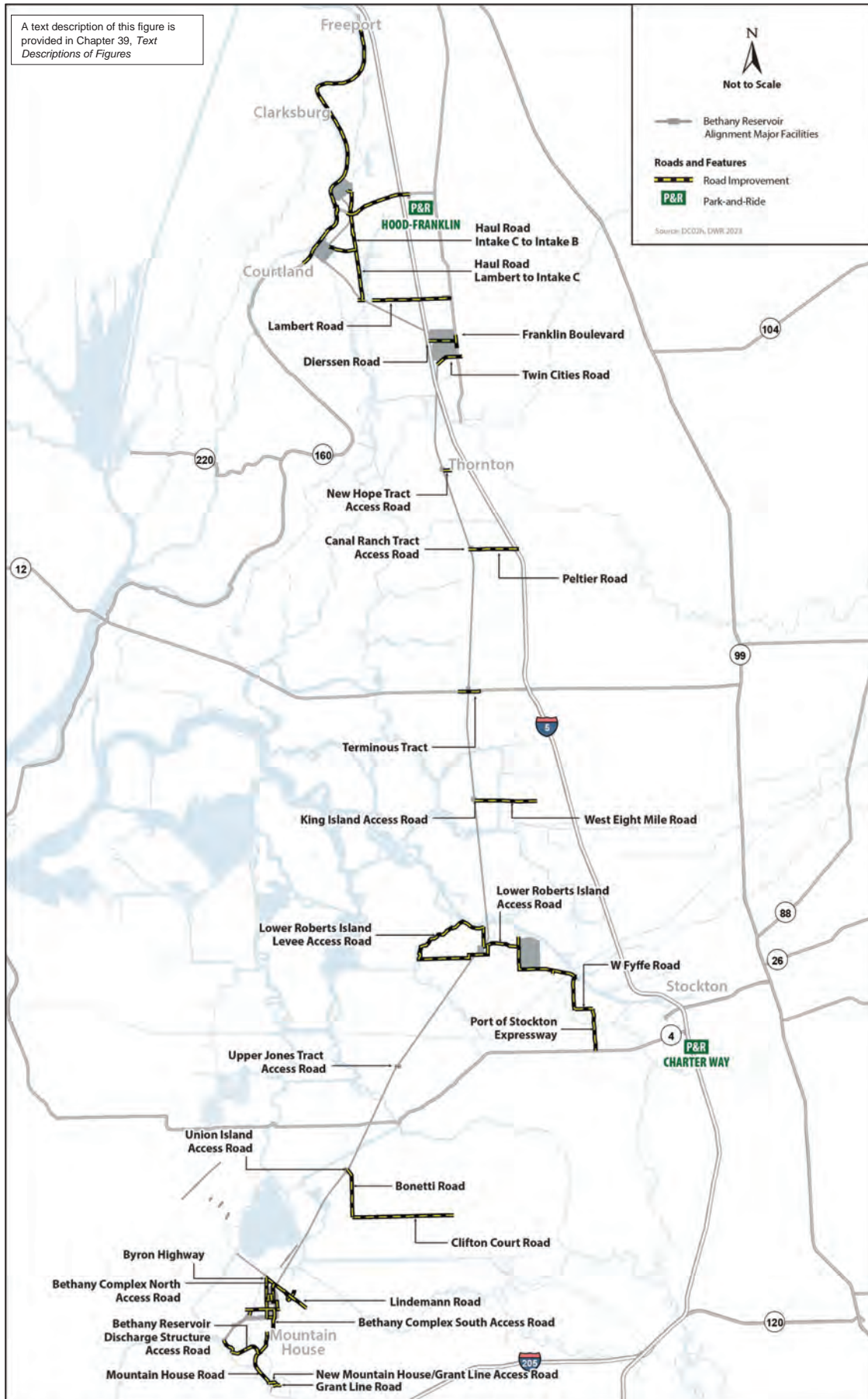
27 The Bethany Reservoir Discharge Structure would be accessed via a new 1.2-mile paved road from  
28 Mountain House Road to the existing Bethany Reservoir (California Aqueduct Bikeway). A 0.6-mile  
29 segment of existing paved road (California Aqueduct Bikeway) along Bethany Reservoir would be  
30 widened from the new access road to the discharge structure. The California Aqueduct Bikeway  
31 would not be accessible across the Bethany Reservoir Discharge Structure during construction.

32 The site access and interior circulation roads would generally be two-lane roads with 12-foot-wide  
33 travel lanes and 3-foot-wide paved shoulders. Paved access would be provided to each of the  
34 pumping plant facilities. Figure 3-35 shows the roads associated with Alternative 5.

1

2

*This page intentionally left blank*



1  
 2 Figure 3-35. Road Modifications under the Bethany Reservoir Alignment

1

2

*This page intentionally left blank*

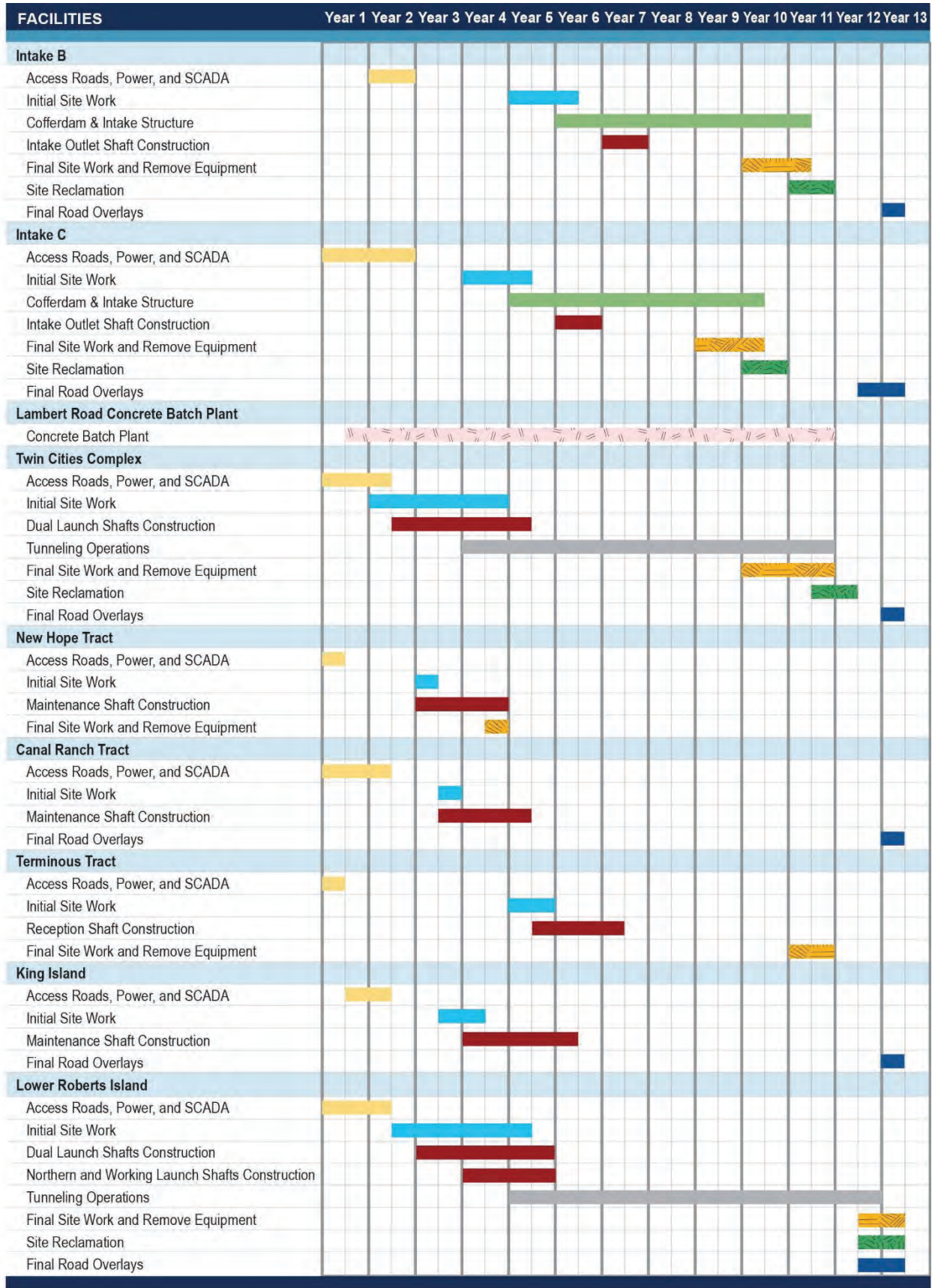
### 1 **3.14.3 Maintenance**

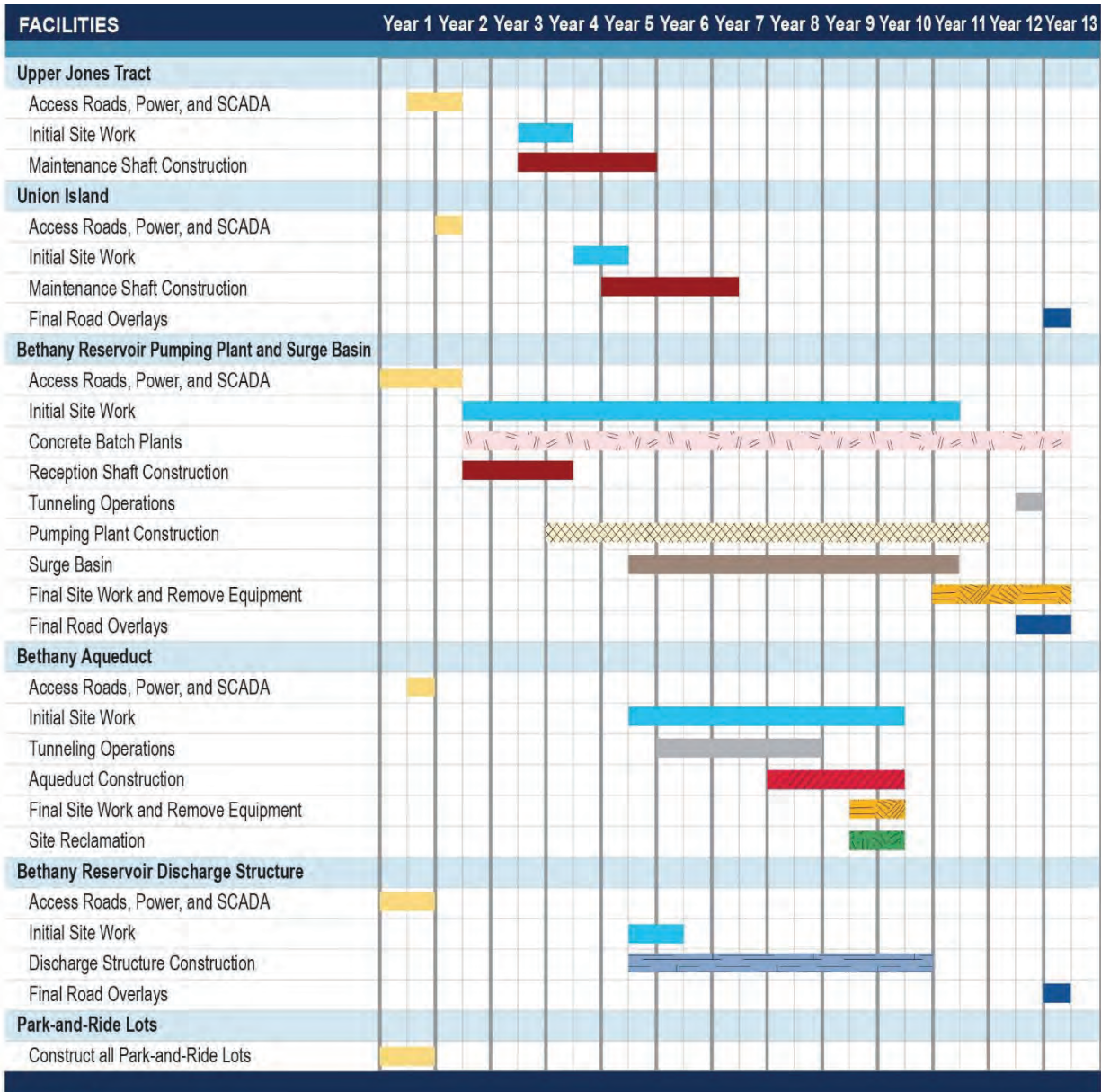
2 Maintenance activities for intakes, tunnel shafts, and tunnel for the Bethany Reservoir alignment  
3 would be the same as under the central and eastern alignments. Daily maintenance activities would  
4 include inspections, security checks, and operations oversight. Less frequent maintenance activities  
5 include operability testing, cleaning, sediment removal (at intakes), dewatering, and repaving.  
6 General and grounds maintenance would occur annually, and debris removal would be required  
7 periodically at the surge basin. If tunnel maintenance activities required dewatering, two portable  
8 60-cfs dewatering pumps would be installed within the Surge Basin reception shaft. Each  
9 submersible pump would be equipped with a variable frequency drive with a flow meter and a flow  
10 control valve. The submersible pumps would discharge directly into the Bethany Reservoir Pumping  
11 Plant discharge pipelines and ultimately to the Bethany Reservoir Discharge Structure.

12 The Bethany Reservoir Pumping Plant site would contain an equipment storage and operations  
13 maintenance building with office space, a welding shop, machine shop, and interior storage for spare  
14 pumps and rotating assemblies, motors, and accessories. Interior storage space would also  
15 accommodate large equipment such as tunnel dewatering pumps, cable reels, and discharge piping  
16 assemblies. An exterior isolation bulkhead gate panel storage and equipment laydown area would  
17 be provided on the north side of the building. Bridge and gantry cranes plus other cranes would be  
18 located both inside and outside of the buildings to move equipment during maintenance procedures.

### 19 **3.14.4 Construction Schedule**

20 Construction of Alternative 5 would take approximately 13 years. Construction would not take place  
21 in all locations at the same time. Rather, it would proceed in stages, starting with access roads and  
22 site work at the intakes and Twin Cities Complex and power and SCADA at maintenance shafts, and  
23 proceeding to equipment decommissioning, site reclamation, and road overlays in the final years, as  
24 shown on Figure 3-36.





Bethany 6,000 cfs

**LEGEND**

	Access Roads, Power, SCADA, and Park-and-Ride Lots	Clear & Grub, Construct Base, Place Surface Material, and Install Power and SCADA Utilities
	Initial Site Work	Clear & Grub, Demolition, Ground Improvement, Foundations, Levees (if applicable)
	Intake Structure	Cofferdam, Temporary and Final Levee/SR160, Fish Screen, Connections to Sedimentation Basin
	Tunnel Shafts	Raise Shaft Pad, Install Cutoff Walls, Excavate Shaft, Install Concrete Liner, and Dewater Shaft
	Final Site Work	Sedimentation Basin, Sediment Drying Lagoons, Buildings, Utilities, and Finish Site Work.
	Final Overlays	Final Pavement Restoration on Access Roads and Adjacent Roads
	Site Reclamation	Reclaim Land outside of Final Fence Lines
	Tunneling Operations	Boring of Tunnel and Removal of RTM
	Concrete Batch Plant	Construct/Erect and Operate Batch Plant
	Bethany Reservoir Pumping Plant	Pumping Plant
	Bethany Reservoir Surge Basin	Surge Basin
	Bethany Reservoir Aqueduct	Aqueduct Tunnels under Jones Aqueduct and Environmental Conservation Areas
	Bethany Reservoir Discharge Structure	Cofferdam and Final Discharge Structure on banks of Bethany Reservoir

1

2 **Figure 3-36. Alternative 5 Construction Schedule**

## 3.15 Field Investigations

*Field investigations* refer to data collection efforts to inform more detailed design and construction.

In 2020, DWR adopted a Final Initial Study/Mitigated Negative Declaration (IS/MND) (California Department of Water Resources 2020b) for the *Soil Investigations for Data Collection in the Delta Project* and issued a Notice of Determination approving it. The purpose of *Soil Investigations for Data Collection in the Delta Project* is to collect data on soil conditions to help determine the composition, location, and geotechnical properties of rock and soil materials commonly found in and around the Delta. This information is expected to contribute to DWR's overall understanding of Delta geology, and this will inform the ongoing development of alternatives, environmental analysis, and conceptual design for the proposed Delta Conveyance Project to support preparation of the Delta Conveyance Project Final EIR. Addenda to the IS/MND (California Department of Water Resources 2021, 2022) were approved and Notices of Determination were issued for minor project changes in February 2021 and June 2022. Approval of the *Soil Investigations for Data Collection in the Delta Project* is separate from the proposed Delta Conveyance Project.

Separate from the soil investigations covered in the 2020 IS/MND, the February 2021 addendum, and the June 2022 addendum (California Department of Water Resources 2020b, 2021, 2022), data collection and field work investigations would be conducted after completion of the Delta Conveyance Project CEQA process and possible project approval. Work related to geotechnical, hydrogeologic, agronomic testing, and construction test projects (geotechnical investigations) would occur during the preconstruction and construction periods following adoption of the Final EIR, identification of an approved project footprint, and acquisition of all required permits. These potential future investigations would, among other things, support Section 408 permitting, design, and construction phases (described below) and would be performed in accordance with standards of USACE, the American Society of Civil Engineers, California Division of Occupational Safety and Health, California Building Code, San Francisco Public Utilities Commission Seismic Design Criteria, American Nuclear Standards Institute, DWR's Division of Safety of Dams, Caltrans Seismic Design Criteria, Southern California Earthquake Center, and other relevant entities. Additional actions not analyzed in this EIR associated with field investigations would comply with the necessary state environmental review requirements and may require additional CEQA review.

### 3.15.1 Investigations to Support Section 408 Permitting

If DWR determines after completion of the CEQA process to approve the proposed project or project alternative, the following activities are anticipated to take place prior to the start of 65% level of design to support the submission of a formal Section 408 permit application to USACE to address intake construction and the tunneled undercrossing of the Stockton Deep Water Ship Channel. Geotechnical investigations and the installation of groundwater monitoring equipment would begin following completion of all required permits. These activities are expected to be completed within approximately 2 years following completion of all required permits, depending on availability of access to the project sites. Groundwater and other monitoring activities would be performed prior, during, and after intake construction completion.

The following subsections discuss the investigations that would be conducted at the intakes and where the tunnel would be located beneath the Stockton Deep Water Ship Channel.



### 1 **3.15.1.1 Soil Borings and Cone Penetration Tests**

2 Soil borings and cone penetration tests (CPTs) would be conducted within the construction  
3 boundaries at the intakes and within the Stockton Deep Water Ship Channel and adjacent non-  
4 project levees at the location of the proposed tunnel undercrossing. Drilling techniques would  
5 generate an approximately 4- to 8-inch-diameter boring. For CPTs, a cone-tipped rod with a  
6 diameter of 1 to 2 inches would be pushed through the ground. All CPT holes would be filled with  
7 grout following completion and prior to abandonment, and all soil borings not planned for  
8 completion as a groundwater monitoring well would be completely grouted following boring.  
9 Groundwater monitoring wells would be constructed with casings, in accordance with state and  
10 local laws, as all groundwater wells would be.

11 The information gained through soil borings and CPTs would be used to develop detailed design  
12 criteria for structure foundations, new and modified levee cross sections, ground improvement,  
13 dewatering methods and quantities, below-grade construction methods, need for impact pile  
14 driving, and methods to reduce ground settlement risk at all construction sites and at the  
15 undercrossing of the Stockton Deep Water Ship Channel. The information would also be used to  
16 determine the depths and widths of groundwater cutoff walls to be installed at the intakes. Soil  
17 samples obtained during soil borings would also be analyzed to determine the specific structural  
18 capabilities of the soil to construct embankments and levees.

### 19 **3.15.1.2 Groundwater Testing and Monitoring**

20 At each intake, one 12-inch-diameter steel-cased test well would be installed in a 24-inch-diameter  
21 borehole to conduct pumping tests. It is also assumed that vibrating wire piezometers would be  
22 installed in several levee borings, and 4-inch groundwater monitoring wells would be installed in  
23 several site borings at each intake to permit measurements of groundwater head, monitoring of  
24 groundwater elevations during the pumping tests, and the collection of water quality samples at the  
25 intake locations.

26 At each intake, a surface water gage would be installed to track the elevation of the adjacent river for  
27 use in analysis of the results.

28 Pumping tests would be conducted in the test wells. Water levels before, during, and following the  
29 various tests would be monitored using automated data loggers, which would also record  
30 barometric pressure and the level of the river. It is assumed that the groundwater monitoring  
31 program would be conducted partially using remotely monitored instrumentation and partially by  
32 on-site personnel.

### 33 **3.15.2 Investigations Prior to Construction Phase**

34 If DWR determines after completion of the CEQA process to approve the Delta Conveyance Project,  
35 the following activities are anticipated to be conducted prior to the start of construction, exclusive of  
36 the previous investigations made in support of Section 408 permitting. Geotechnical investigations  
37 or the installation of monitoring equipment would be conducted within approximately 2 years  
38 following completion of all required permits.

### 1 **3.15.2.1 Investigation at Facility Locations**

2 Explorations would occur at the intakes, tunnel shafts, tunnel alignments, power lines, access roads  
3 and bridges, railroads, levees, and at the terminal facilities. Locations where investigations would  
4 occur include the Southern Complex on Byron Tract and Southern Complex west of Byron Highway  
5 for Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c; and the Bethany Reservoir Pumping Plant and Surge  
6 Basin, Bethany Reservoir Aqueduct, and Bethany Reservoir Discharge Structure for Alternative 5.

### 7 **Soil Borings and Cone Penetration Tests**

8 Land-based soil borings, overwater soil borings, and CPTs would be conducted within the  
9 construction boundaries of the intakes, tunnel shafts, tunnel alignments, power lines, access roads  
10 and bridges, railroads, and levees. For Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c, they would also be  
11 conducted at the pumping plant and the entire Southern Complex on Byron Tract and west of Byron  
12 Highway. For Alternative 5, they would also be conducted at the Bethany Reservoir Pumping Plant  
13 and associated Surge Basin and aqueduct, and the Bethany Reservoir Discharge Structure. The  
14 methods for soil borings and CPTs are as described in Section 3.15.1.1, *Soil Borings and Cone*  
15 *Penetration Tests*.

16 The information collected would be used to develop detailed design of the structure and bridge  
17 foundations, new or modified levee cross sections, ground improvement methodology; and to  
18 determine selection of tunnel boring machine methods, dewatering methods and quantities, below-  
19 grade construction methods (such as at the shafts and the pumping plant), need for impact pile  
20 driving, and methods to reduce ground settlement risk at all construction sites and along the tunnel  
21 alignment. The information would also be used to determine the specific depths and widths of  
22 groundwater cutoff walls to be installed at select construction sites.

23 Soil samples obtained during soil borings also would be analyzed to determine the structural  
24 capabilities of the soil and/or RTM to construct tunnel shaft pads, levee improvements, and the  
25 Southern Forebay embankments. Soil and water quality tests would be conducted to determine the  
26 potential for the presence of high concentrations of metals, organic materials, or hazardous  
27 materials that would require specific treatment and/or disposal methods.

### 28 **Bethany Fault Study**

29 The Bethany Fault Study would apply only to Alternative 5 on the Bethany Reservoir alignment.  
30 Electrical resistivity tomography (ERT) would be used to characterize subsurface soil characteristics  
31 above the proposed Bethany Reservoir Aqueduct tunnels. ERT involves “a linear array of removable  
32 small steel electrodes (approximately 0.5 inches in diameter by 8 inches long) driven into the  
33 ground approximately every 10 feet over several hundred feet to induce a low current in the ground,  
34 while a small readout unit provides the measurements” (California Department of Water Resources  
35 2020b:17).

### 36 **Groundwater Testing and Monitoring**

37 A test well for pumping tests would be installed at each tunnel shaft and at each intake. At each  
38 intake, a surface water gage would be installed to track the elevation of the adjacent river for use in  
39 analysis of the results. For the tunnel alignment, it is assumed that vibrating wire piezometers  
40 would be installed in boreholes drilled along the tunnel alignment at a frequency of, on average,  
41 every third borehole, or approximately every 3,000 feet. Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c

1 would also include two test wells at the Southern Complex. Alternative 5 would include two test  
2 wells to be installed at the Bethany Reservoir Pumping Plant and Surge Basin, and at each of the two  
3 planned tunneled sections of the Bethany Reservoir Aqueduct.

4 Monitoring well and test well installation methods are described in Section 3.15.1.2, *Groundwater*  
5 *Testing and Monitoring*. The groundwater monitoring program would be implemented to determine  
6 the seasonal variations in groundwater elevations, the constituents of the groundwater (including  
7 the nature and presence of dissolved gas), and the interrelation between groundwater and surface  
8 water levels for several years before construction. It is assumed that the groundwater monitoring  
9 program would be conducted partially using remotely monitored instrumentation and partially by  
10 on-site personnel.

### 11 **Test Trenches**

12 Test trenches approximately 30 feet long, 3 feet wide, and 10 feet deep would be implemented at all  
13 the facilities to confirm near-surface soils and to investigate potential buried magnetic anomalies.  
14 Trenches would be immediately backfilled following observations of the soil conditions encountered  
15 in the trench.

### 16 **Monument Installation**

17 Metal survey monuments would be installed at all construction sites and approximately every mile  
18 along the tunnel alignments to allow the remote monitoring of surface elevations prior to the start of  
19 construction, during construction, and during operations. Monuments would be approximately 10  
20 feet by 10 feet base and 3 feet high to be of adequate size to be visible from satellite-based  
21 Interferometric Synthetic Aperture Radar (inSar) used for remote monitoring. Concrete foundations  
22 would be installed for the monuments and the monuments would be left in place for the duration of  
23 construction. It is assumed that periodic monitoring of survey monuments would be conducted by  
24 security and on-site personnel.

## 25 **3.15.2.2 Geotechnical Pilot Studies for Settlement**

26 Site-specific pilot studies would be conducted to test the geotechnical response to placement of fill  
27 at tunnel shaft sites. For Alternatives 1, 2a, 2b, and 2c, pilot studies are proposed test fills at New  
28 Hope Tract (central alignment location), Staten Island, Bouldin Island, Mandeville Island, and Bacon  
29 Island. For Alternatives 3, 4a, 4b, and 4c, pilot studies would be conducted at New Hope Tract  
30 (eastern alignment location), Canal Ranch Tract, Terminous Tract, King Island, Lower Roberts  
31 Island, and Upper Jones Tract (eastern alignment location). For Alternative 5, pilot studies are  
32 proposed at New Hope Tract (eastern and Bethany Reservoir alignments location), Canal Ranch  
33 Tract, Terminous Tract, King Island, Lower Roberts Island, Upper Jones Tract (Bethany Reservoir  
34 alignment location), and Union Island.

35 Test fills would be within the construction boundaries of the project and, where feasible, within or  
36 adjacent to the shaft pad sites. The test fills would be approximately 10 feet high and roughly 1,000  
37 square feet in base area. The material would be purchased from a commercial enterprise that  
38 provides soil. The studies would include the installation of inclinometers, piezometers, and  
39 borehole extensometers within soil borings, as well as settlement plates buried within the fill, to  
40 verify estimates of consolidation and lateral spreading of pad fills in peat and soft soils.

1 Additional soil borings and CPTs would be completed within and adjacent to the test fill areas prior  
2 to their placement. Inclinerometers and extensometers would be installed in holes drilled within and  
3 adjacent to the test fills. It is assumed that management of the pilot studies would be conducted by  
4 on-site personnel.

### 5 **3.15.2.3 Validation of Ground Improvement Methods**

6 Ground improvement would likely consist of a combination of excavation of unsuitable soils and  
7 replacement with compacted suitable fill material, surcharging to induce consolidation before final  
8 construction, and *in situ* techniques such as deep mechanical mixing (DMM) method to mix  
9 amendments (such as cement) into the foundation to add strength and resistance to liquefaction,  
10 including the installation of a grid of DMM soil shear walls with cement under the footprints of large  
11 structures. Final site-specific methods would be determined through geotechnical investigations and  
12 test installations, especially on land with substantial deposits of peat and loose or soft soils. These  
13 investigations would include trial mix and DMM construction programs to confirm appropriate area  
14 and volume replacement ratios, desired cement content, and testing to confirm *in situ* strength and  
15 lateral extent.

16 For Alternatives 1, 2a, 2b, and 2c, these activities are proposed at New Hope Tract (central  
17 alignment location), Staten Island, Bouldin Island, Mandeville Island, and Bacon Island. For  
18 Alternatives 3, 4a, 4b, and 4c, investigations are proposed at New Hope Tract (eastern alignment  
19 location), Canal Ranch Tract, Terminous Tract, King Island, Lower Roberts Island, Upper Jones Tract  
20 (eastern alignment location), and Byron Tract. For Alternative 5, these activities are proposed at  
21 New Hope Tract (eastern and Bethany Reservoir alignments location), Canal Ranch Tract,  
22 Terminous Tract, King Island, Lower Roberts Island, Upper Jones Tract (Bethany Reservoir  
23 alignment location), and Union Island.

### 24 **3.15.2.4 Pile Installation Methods at the Intake Locations**

25 The intake locations would include the construction of temporary in-river cofferdams. The  
26 cofferdams would employ the use of interlocking steel sheet piles. Pilot studies would be conducted  
27 to test pile installation and possible acoustic mitigation measures in the river at one intake site along  
28 the Sacramento River. The studies would include use of equipment to monitor vibrations in air and  
29 water and noise while test driving a variety of a pile types using vibratory and driving methods to  
30 validate rates and penetration depths. Noise associated with vibratory pile driving is considerably  
31 lower than noise associated with impact hammer pile driving. Additionally, CPTs would be  
32 performed in the river from a barge to determine the *in situ* density of the soils prior to, during, and  
33 after test pile installation.

### 34 **3.15.2.5 Vibratory Testing of Dynamic Properties**

35 Vibratory testing of dynamic properties of peat would be conducted in the Delta for validation of  
36 peat soil response during earthquakes. This would include continuation of previous studies in the  
37 Delta, including those on Sherman Island (Reinert et al. 2014), or additional peat studies at up to  
38 two sites at Bouldin Island, Lower Roberts Island, or Byron Tract for Alternatives 1, 2a, 2b, 2c, 3, 4a,  
39 4b, and 4c or at Lower Roberts, Upper Jones Tract, or Union Island for Alternative 5.

### 1 **3.15.2.6 Location of Buried Groundwater and Natural Gas Wells**

2 Desktop surveys of documented wells would be conducted and would include research of historical  
3 topographical mapping that may document the presence of wells that were not identified in the  
4 State of California oil and gas database, as maintained by California Department of Conservation  
5 (previously known as DOGGR, and now known as CalGem [Geologic Energy Management Division]).  
6 A field test program would be used to evaluate the suitability of various geophysical techniques to  
7 detect buried and abandoned wells.

8 To identify and/or confirm the location of well casings, including wells that have not been identified  
9 in the published database, the use of wide-area airborne methods (drone, helicopter, and/or fixed-  
10 wing aircraft) to conduct magnetic surveys followed by more site-specific walk- or tow-over ground-  
11 based magnetic surveys is assumed. These surveys would be conducted at intake and tunnel shaft  
12 locations, along tunnel alignments, and at the Bethany Complex to identify buried groundwater and  
13 natural gas and oil wells. Surface geophysical surveys would also be conducted at these locations.  
14 The locations of identified wells would be evaluated to determine methods to abandon, relocate, or  
15 avoid the wells.

### 16 **3.15.2.7 West Tracy Fault Study**

17 Up to six test trenches (up to approximately 1,000 feet long, 3 feet wide, and 20 feet deep) would be  
18 excavated along a line running from the southeast of Byron to the southeast of Clifton Court Forebay  
19 to further investigate the nature and location of the West Tracy Fault between the town of Byron  
20 and the area southeast of the forebay. The trenches would remain open for up to 6 weeks,  
21 depending on the findings, and would be backfilled completely upon the completion of observation  
22 of soil conditions within the trench.

23 In addition to the test trenches, two arrays of surface geophysical surveys would be completed  
24 before, and along the alignment of, the excavation of the test trenches. Geophysical surveys would  
25 consist of noninvasive techniques that could be used to provide information on subsurface geologic  
26 conditions and anomalies, such as buried casings or abandoned wells. Seismic refraction/reflection  
27 techniques would be used at each of the two linear sites, referred to as geophysical arrays.

28 CPTs and soil borings would also be conducted. Select soil samples from the test borings would be  
29 subjected to age-dating laboratory testing.

### 30 **3.15.2.8 Agronomic Testing**

31 If field investigations described above indicate it is warranted, additional agronomic testing would  
32 be conducted. Agronomic testing would include investigations and testing of compacted soil  
33 rehabilitation methods and rehabilitation treatments for establishing agricultural crop or native  
34 grass species. Agronomic testing would validate the reuse assumptions prior to reclamation of  
35 disturbed areas based on representative samples and likely tunneling conditioners. This pilot-scale  
36 testing would be used to refine program-level approaches and strategies for RTM stockpiling and  
37 reuse.

### 38 **3.15.2.9 Utility Potholing**

39 Utility potholing, utilizing either a vacuum excavator or a backhoe, would be conducted to confirm  
40 locations of existing utilities such as public and residential utilities, surface water diversions, and

1 agricultural drainage features. Utility potholing would be conducted at locations near the intakes,  
2 underground SCADA and power corridors, road and bridge modifications including intersections,  
3 tunnel shaft sites, and at utility crossings along the tunnel alignment. For Alternatives 1, 2a, 2b, 2c, 3,  
4 4a, 4b, and 4c, utility potholing would also be conducted at the Southern Complex. For Alternative 5,  
5 utility potholing would also be conducted at Union Island, Bethany Reservoir Pumping Plant and  
6 Surge Basin, the Bethany Reservoir Aqueduct, the Bethany Reservoir Discharge Structure, the raw  
7 water feed from the Skinner Fish Facility, and at new road and road widening locations. The  
8 investigations would be conducted within the construction boundaries of the project.

9 The investigations would include vacuum or backhoe excavations, followed by noninvasive surface  
10 field surveys. Some features would not require utility potholing and would be located using only  
11 noninvasive surface field surveys.

### 12 **3.15.3 Investigations during Construction Phase**

13 If DWR determines after completion of the CEQA process to approve the proposed project or project  
14 alternative, the following activities would be conducted after the start of construction. These  
15 activities are primarily related to the installation of monitoring equipment, such as inclinometers,  
16 confirmatory sampling for areas of ground improvement, and investigations related to evaluation of  
17 changes in anticipated conditions or alternative contractor means and methods. These activities  
18 would also address USACE Section 408 and CVFPB requirements for monitoring through  
19 construction. Geotechnical investigations or the installation of monitoring equipment would be  
20 conducted within the first 2 years following the start of construction.

#### 21 **3.15.3.1 Soil Boring and Cone Penetration Tests**

22 Soil boring and CPT investigations during construction would occur in the same locations as  
23 described in Section 3.15.2.1, *Investigations at Facility Locations*. These geotechnical investigations  
24 would generally be conducted within the first 2 years of the proposed construction period, including  
25 during the period when ground improvement activities would be conducted, although they could  
26 extend throughout the duration of construction and commissioning to account for delayed starts  
27 and to resolve disputes. These investigations could be conducted at any location within the  
28 construction boundaries and would also be used to confirm the suitability of construction means  
29 and methods planned by the contractor.

#### 30 **3.15.3.2 Construction Monitoring**

##### 31 **Monitoring for Ground Movement during Construction**

32 Inclinometers and extensometers would be installed in vertical borings along levees at the intakes,  
33 along the tunnel alignment and at tunnel shafts. For Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c, they  
34 would also be installed at Bouldin Island (central alignment), Lower Roberts Island (eastern and  
35 Bethany Reservoir alignments), and Byron Tract; and along levees near bridge improvements along  
36 Hood-Franklin Road over Snodgrass Slough, SR 12 over Little Potato Slough, access road to  
37 Mandeville Island over Connection Slough, access road to Lower Roberts Island over Burns Cut and  
38 Turner Cut; the bridge across the California Aqueduct near Byron Highway, and at the Southern  
39 Complex. For Alternative 5, they would also be installed at King Island, Lower Roberts Island, Upper  
40 Jones Tract, Victoria Island, Union Island, and Coney Island; and along levees near bridge

1 improvements along Hood-Franklin Road over Snodgrass Slough, the access road to Lower Roberts  
2 Island over Burns Cut and Turner Cut, and at Bethany Complex.

3 No instrumentation is assumed at the new levees, while inclinometers are planned at 1000-foot  
4 centers along areas of levee improvements. Tilt meters, settlement plates, and survey monuments  
5 would be installed at all construction sites and approximately every mile along the tunnel alignment.

## 6 **Groundwater Monitoring**

7 Where groundwater monitoring wells were installed before construction, they could continue to be  
8 used during and following construction. Additional groundwater monitoring wells would be  
9 installed during construction if permanent easements or land ownership were not acquired before  
10 construction, or if initial monitoring results indicated the need for more detailed information related  
11 to groundwater elevation or water quality. It is anticipated that the groundwater monitoring  
12 locations would be located at the intakes, tunnel shafts, access roads. For Alternatives 1, 2a, 2b, 2c, 3,  
13 4a, 4b, and 4c, monitors would also be located at the Southern Complex on Byron Tract and west of  
14 the Byron Highway. For Alternative 5, monitors would also be located at Bethany Complex. For all  
15 alternatives, monitoring wells would be located approximately every 2 miles along the tunnel  
16 alignment between shafts. It is assumed that the groundwater monitoring program would be  
17 conducted partially using remotely monitored instrumentation and partially by on-site personnel.

## 18 **Location of Buried Groundwater and Natural Gas Wells**

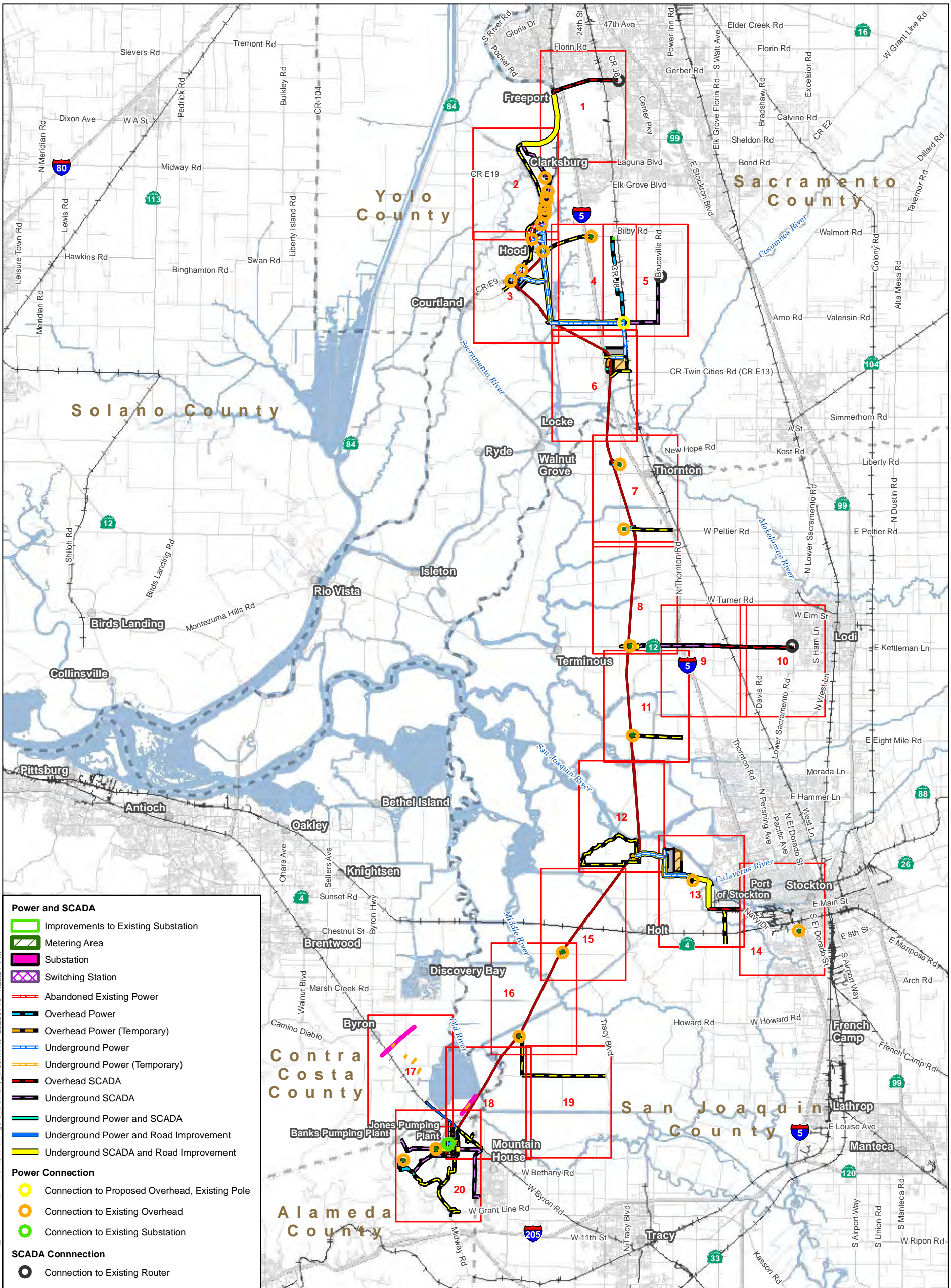
19 Land surveys, drilling, and trenching would be used at all intake and tunnel shaft locations, along  
20 tunnel alignments, and at the Bethany Complex or the Southern Complex to identify and abandon  
21 buried groundwater and natural gas and oil wells before and during construction.

## 22 **3.16 Intake Operations and Maintenance**

23 The proposed north Delta intakes would operate in conjunction with the existing SWP and  
24 potentially CVP intakes in the south Delta for all alternatives. Operations of the existing SWP  
25 facilities, and in coordination with CVP operations pursuant to the Coordinated Operations  
26 Agreement, will be governed by the applicable regulatory requirements specified under the  
27 State Water Board *Water Quality Control Plan for the San Francisco Bay/Sacramento-San*  
28 *Joaquin Delta Estuary* (Bay-Delta WQCP) and assigned to the SWP in the applicable water right  
29 decision, applicable biological opinions under ESA, applicable incidental take permit under  
30 CESA, and USACE Clifton Court diversion limits. The operations of the proposed north Delta  
31 intakes would remain consistent with these existing regulatory requirements. The proposed  
32 project is seeking a new point of diversion, and is not seeking to expand water right quantity. In  
33 addition, diversions at the proposed north Delta intakes would be governed by new operational  
34 criteria specific to these intakes, such as the fish screen approach velocity requirements, bypass  
35 flow requirements, and pulse protection. These new criteria provide additional protections to  
36 the fish species over and above the protections from the state-of-the-art positive barrier fish  
37 screens included at the proposed intakes. Following the narrative description of proposed  
38 operations in Sections 3.16.1 through 3.16.6, a detailed table describing the proposed  
39 operational criteria is provided (Table 3-14). Additional detail for the proposed north Delta  
40 intakes is provided in Table 3-15 in Section 3.16.7, *Delta Conveyance Project Preliminary*

# Exhibit D





**Power and SCADA**

- Improvements to Existing Substation
- Metering Area
- Substation
- Switching Station
- Abandoned Existing Power
- Overhead Power
- Overhead Power (Temporary)
- Underground Power
- Underground Power (Temporary)
- Overhead SCADA
- Underground SCADA
- Underground Power and SCADA
- Underground Power and Road Improvement
- Underground SCADA and Road Improvement

**Power Connection**

- Connection to Proposed Overhead, Existing Pole
- Connection to Existing Overhead
- Connection to Existing Substation

**SCADA Connection**

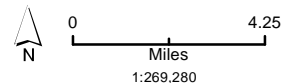
- Connection to Existing Router

Map Extent	Batch Plant	Intake Structure	Shaft	Permanent Surface Impact
<b>Project Feature</b>	Concrete Batch Plant	Outlet Structure	Shaft Pad	Temporary Surface Impact
Road Improvement	Control Structure	Peat Storage	Slurry/Grout Mixing Plant	Geotechnical Investigation Zone*
Aqueduct	Discharge Structure	Pumping Plant	Substation	RTM and Ring Levee
Construction Water Pipeline	Electrical Building	Rail Depot	Surge Basin	Ring Levee
RTM Conveyor	Fuel Station	Sediment Drying Lagoon	Surge Tank	RTM Area
Rail Spur	Fuel Storage	Sedimentation Basin	Topsoil Storage	Levee Improvement Area
Runoff Discharge Pipe	Intake Facility Grounds	Septic System	Water Treatment and Storage Tanks	West Tracy Fault Trench Line Work Area
Tunnel			Permanent Subsurface Impact	Bethany Fault Study Geophysical Line Work Area
				West Tracy Geophysical Line Work Area

\*Geotechnical investigations would also be conducted within all project feature construction boundaries.

Sources: DCA, DWR [December 2023]

This mapbook is a scaled representation of the GIS data and only shows major facilities.



**Figure: Index**  
Bethany Reservoir Alignment Alternative 5

# Exhibit E

**1 Contents**

2 Common Response 8: Relationship to Other Plans, Projects, Policies, and Programs ..... 2

3 Overview ..... 2

4 State-Level Planning Efforts ..... 2

5 Delta Reform Act ..... 2

6 California Water Resilience Portfolio ..... 7

7 California’s Water Supply Strategy ..... 8

8 Sustainable Groundwater Management Act and Groundwater Sustainability

9 Plans ..... 9

10 State Water Resources Control Board Authorities and Responsibilities ..... 19

11 Designated Beneficial Uses and Water Rights ..... 19

12 Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem ..... 21

13 Updates to the Bay-Delta Water Quality Control Plan and Voluntary Agreements ..... 23

14 Antidegradation Policy and Analysis ..... 25

15 Department of Water Resources Delta Efforts ..... 27

16 Levee Management ..... 27

17 Water Quality Monitoring Programs ..... 28

18 References Cited ..... 28

19

# Common Response 8: Relationship to Other Plans, Projects, Policies, and Programs

## Overview

The State CEQA Guidelines direct a lead agency to assess whether a proposed project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect” (CEQA Guidelines Appendix G). This Common Response addresses the common themes and topics raised in public comments on the Draft EIR related to the Delta Conveyance Project (project) and possible conflicts with, and relationship to, various state, regional, and local plans, projects, policies, and programs that were identified by commenters or that are relevant to the planning, design, construction, and operation and maintenance of the project. These themes include the following.

- Lack of a formal certification of consistency, lack of a consistency analysis, or other alleged inconsistencies between the Delta Conveyance Project and the goals and objectives of the Delta Reform Act of 2009, including those associated with the act’s coequal goals, with reducing reliance on the Delta in meeting future water supply needs, and with applicable regulatory policies in the *Delta Plan* administered by the Delta Stewardship Council (DSC).
- The relationship of the Delta Conveyance Project to the California Water Resilience Portfolio (California Natural Resources Agency et al. 2020) and the California Water Supply Strategy.
- The relationship between the Delta Conveyance Project and the Sustainable Groundwater Management Act (SGMA), including groundwater sustainability plans (GSPs) for the groundwater basins in the Delta and neighboring areas, and topics under SGMA or the lack of consideration of SGMA in the EIR.
- The relationship of the Delta Conveyance Project to the authorities and responsibilities of the State Water Resources Control Board (State Water Board) to establish water quality control measures and flow requirements to protect beneficial uses in the Delta, manage water rights, and implement federal and state antidegradation policies.
- The relationship of the Delta Conveyance Project to the California Department of Water Resources’ (DWR’s) ongoing efforts to coordinate with local governments and special districts to maintain and improve levees that protect the Delta.

## State-Level Planning Efforts

This section provides additional information related to comments on key aspects of past and ongoing state-level water supply planning efforts. Many of these planning efforts are described in Chapter 1, *Introduction*, and Appendix 3E, *Delta Reform Act Considerations*.

## Delta Reform Act

A number of comments asserted that the Delta Conveyance Project is not consistent with the goals and objectives of the Sacramento–San Joaquin Delta Reform Act of 2009 (Delta Reform Act) or the *Delta Plan*, or that the project should not be approved because of the alleged conflicts with the goals and objectives of the Delta Reform Act or *Delta Plan* policies. This section discusses the relationship

1 of the Delta Conveyance Project with the Delta Reform Act, including the coequal goals established  
2 by the act, its policy of reducing reliance on the Delta for water supply, and the project's relationship  
3 to the *Delta Plan*. As discussed in detail in the following sections, the project does not result in a  
4 significant environmental impact due to a conflict with the Delta Reform Act or the applicable  
5 policies in the *Delta Plan*. DWR will fully comply with its obligations under the Delta Reform Act to  
6 certify consistency with the applicable policies in the *Delta Plan* before initiating implementation.  
7 See below for more information regarding the timing of the *Delta Plan* certification of consistency  
8 process in relation to the EIR and CEQA Compliance.

9 Referenced throughout the discussion that follows is Appendix 3E, which provides information  
10 regarding the Delta Conveyance Project's relationship to the Delta Reform Act, the *Delta Plan*, and  
11 the *Delta Plan* Certification of Consistency Process. The appendix provides the history of the Delta  
12 Reform Act, the DSC, and the *Delta Plan*. The appendix also describes where related information can  
13 be found in the Final EIR and the Engineering Project Reports (EPRs) (Delta Conveyance Design and  
14 Construction Authority 2022a, 2022b) demonstrating that the proposed project and project  
15 alternatives do not result in a significant environmental impact due to a conflict with any applicable  
16 policies in the *Delta Plan*.

17 While Appendix 3E and the supporting evidence referenced therein demonstrate that the proposed  
18 project and project alternatives do not result in a significant environmental impact due to a conflict  
19 with any applicable policies in the *Delta Plan*, as noted in Appendix 3E, the Final EIR, including the  
20 supporting appendices, is not intended to be, nor should it be, considered the entirety of the record  
21 necessary to support DWR's consideration of a certification of consistency (Wat. Code § 85225) with  
22 the *Delta Plan*. After the CEQA process is completed, and if DWR approves the Delta Conveyance  
23 Project or a project alternative, DWR will begin the process to confirm and certify, with detailed  
24 findings, that it is consistent with the *Delta Plan* and submit that certification to the Delta  
25 Stewardship Council. (See Wat. Code § 85225).

26 The following sections summarize the major issues raised in comments related to the Delta Reform  
27 Act and provide brief descriptions of and references to related Final EIR chapters and appendices,  
28 which will guide readers to the relevant information.

## 29 **Coequal Goals**

30 Some comments suggested that the Delta Conveyance Project is not consistent with the Delta  
31 Reform Act's coequal goals of providing a more reliable water supply while also protecting,  
32 restoring, and enhancing the Delta ecosystem, and therefore the project should not be approved.  
33 Other comments claimed that the project simply relocates impacts from the export of Delta water to  
34 a new area of the Delta or that it includes no protective, restoration, or enhancement measures in  
35 excess of mitigation required to reduce project impacts.

36 Appendix 3E describes how the Delta Conveyance Project is consistent with the achievement of the  
37 coequal goals and explains that the project can be achieved in a manner that protects and enhances  
38 the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving  
39 place. As outlined in the appendix, the Delta Conveyance Project will not conflict with the stated  
40 coequal goals of the Delta Reform Act, which are to provide a more reliable water supply for  
41 California and protect, restore, and enhance the Delta ecosystem (Pub. Resources Code § 29702;  
42 Wat. Code § 85054).

1 There is no requirement in state law that the Delta Conveyance Project, alone and as a single project,  
2 must further or achieve the coequal goals. The Delta Conveyance Project, however, is not only  
3 consistent with the coequal goals, but it will also support and advance the coequal goal of enhancing  
4 and protecting reliable water supplies from the Delta. Furthermore, the Delta Reform Act recognizes  
5 that new conveyance infrastructure is essential to achieving the coequal goals. California Water  
6 Code Section 85004(b) states that providing a more reliable water supply involves “new ... Delta  
7 conveyance facilities”; and Section 85020(f) includes improving the water conveyance system in the  
8 Delta among the objectives inherent in the coequal goals. The *Delta Plan* recommends that Delta  
9 conveyance be modernized by developing a dual conveyance system that continues to rely on south-  
10 Delta diversion infrastructure while adding one or more new, screened intakes in the north Delta  
11 connected to existing State Water Project (SWP) infrastructure via isolated conveyance (*Delta Plan*  
12 recommendation WR R12a). The Delta Conveyance Project is consistent with that framework.

13 As described in Chapter 2, *Purpose and Project Objectives*, and Appendix 3E, the fundamental  
14 purpose of the Delta Conveyance Project is to restore and protect the reliability of the SWP water  
15 deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta,  
16 consistent with the *California Water Resilience Portfolio* (California Natural Resources Agency et al.  
17 2020) and in a cost-effective manner. This stated purpose gives rise to project objectives (refer to  
18 Chapter 2) that are consistent with the coequal goals of the Delta Reform Act. For example, the Delta  
19 Conveyance Project would support the coequal goals by increasing operational flexibility to divert  
20 water during high-flow events, thereby making SWP water supplies more resilient to the potential  
21 effects of climate change, including wetter wet periods, and more reliable overall. In addition, as  
22 demonstrated by the substantial evidence contained in the EIR, the project would achieve the  
23 project objectives without significantly affecting the state’s ability to achieve the goal of protection  
24 of the Delta ecosystem because impacts of the project on terrestrial and aquatic biological species  
25 either are less than significant or would be mitigated to less-than-significant levels.

26 Finally, the Delta Conveyance Project would not significantly affect the state’s ability to achieve the  
27 coequal goals in a manner that protects and enhances the Delta as an evolving place. The project  
28 would do this through the combination of mitigation described in Chapters 7 through 32; the  
29 implementation of the Community Benefits Program described in Appendix 3G, *Community Benefits*  
30 *Program Framework*; and the establishment of an ombudsman program as described in Chapter 3,  
31 *Description of the Proposed Project and Alternatives*, in the section titled *Ombudsman*. For example,  
32 as described in Appendix 3E, the practical effect of many of the project’s mitigation measures and  
33 environmental commitments is to protect Delta values. (The following resource chapters discuss  
34 impacts and mitigation related to Delta values: Chapter 14, *Land Use*; Chapter 15, *Agricultural*  
35 *Resources*; Chapter 16, *Recreation*; Chapter 17, *Socioeconomics*; Chapter 18, *Aesthetics and Visual*  
36 *Resources*; and Chapter 19, *Cultural Resources*.)

37 Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review*  
38 *Issues*, explains that the fundamental purpose of the project is not to restore the Delta ecosystem and  
39 that restoration of the Delta ecosystem does not need to occur before the project (or occur as part of  
40 the project) in order for the project to be considered consistent with the Delta Reform Act.

## 41 **Reduced Reliance on the Delta**

42 Several comments suggested that DWR and public water agencies (PWAs) are required by the Delta  
43 Reform Act to reduce their reliance on water that flows through the Delta instead of relying on  
44 existing exports or future exports from the Delta Conveyance Project for water supplies. Other

1 comments claimed that by approving and implementing the Delta Conveyance Project, PWAs would  
2 be increasing their reliance on Delta exports and therefore would not be in compliance with the  
3 Delta Reform Act.

4 As explained in Chapter 1 and Appendix 3E, the Delta Reform Act includes a state policy to reduce  
5 reliance on the Delta in meeting California's future water supply needs through a statewide strategy  
6 of investing in improved regional supplies, conservation, and water use efficiency (Wat. Code §  
7 85021). Under California Water Code Section 85021, it is also state policy that each region that  
8 depends on water from the Delta watershed should improve its regional self-reliance by investing in  
9 alternative water supplies. Section 85021 does not impose an obligation on DWR to do anything, let  
10 alone only to pursue projects that reduce reliance on SWP supplies or improve regional self-reliance.  
11 In addition, Section 85021 does not expressly or implicitly require DWR to reduce SWP diversions  
12 from the Delta, as several commenters assume. The DSC's regulatory reduced reliance policy, WR P1  
13 (which stems from but differs from the statutory policy), acknowledges that water suppliers can  
14 show reduced reliance either as "the reduction in the amount of water used, or in the percentage of  
15 water used, from the Delta watershed." (Cal. Code Regs, tit. 23, § 5003, subd. (c)(1)(C).) Even if the  
16 Delta Conveyance Project increases diversions, it does not mean water suppliers receiving that  
17 water will necessarily increase their reliance on State Water Project supplies. As water demands in a  
18 water supplier's service area grow, the same or even an increased volume of water from the Delta  
19 watershed may still represent a smaller percentage of overall supplies.

20 Furthermore, regarding the policy in Water Code Section 85021, neither DWR nor any of the PWA  
21 proponents of the project have the legal authority or the duty to adopt or impose a statewide  
22 investment strategy on different regions of the state or on individual water suppliers that depend on  
23 water from the Delta watershed. In addition, DWR lacks any legal authority to mandate coordinated  
24 efforts among local and regional water suppliers to advance the Delta Reform Act policy that regions  
25 of the state that depend on water from the Delta watershed improve their regional self-reliance.

26 As described in Chapter 3 and Common Response 3, *Alternatives Development and Description*, the  
27 Delta Conveyance Project would be operated to shift diversions from the south Delta to the north  
28 Delta or to divert water in the north Delta during excess flow conditions while meeting existing  
29 regulatory requirements. Any exports that would occur under the project would be governed by  
30 new permit terms and conditions for the Delta Conveyance Project from the State Water Board,  
31 California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and National Marine  
32 Fisheries Service; the Delta Conveyance Project operational criteria; and the existing regulatory  
33 framework.

34 Furthermore, PWAs and DWR are pursuing a wide range of opportunities to improve statewide  
35 water supply reliability and regional self-reliance as well as to more efficiently and sustainably  
36 manage or reduce water use. As described in Appendix 3C, *Defining Existing Conditions, No Project  
37 Alternative, and Cumulative Impact Conditions*, and in the *No Project Alternative* sections found in  
38 Chapters 5 through 32, PWAs are implementing different strategies and activities to conserve water,  
39 to manage demand and supply efficiently, and to develop local sources of water, depending on each  
40 area's unique characteristics and geography. The Delta Conveyance Project would be a part of the  
41 SWP, and Common Response 5, *Public Water Agencies Water Management Practices*, describes  
42 existing efforts and future actions to be undertaken by SWP users to ensure California's water  
43 resources are being used efficiently and sustainably.

1 These activities are consistent with and support reducing reliance on the water supply from the  
2 Delta to meet California’s future water supply needs. However, the water supplied by the SWP is,  
3 and will continue to be, the backbone of California’s water supply infrastructure. The SWP is a key  
4 component of the water supply portfolio for the participating PWAs, and they will continue to rely  
5 on and need the water exported by the SWP. Their existing and continued activities to improve local  
6 self-reliance and to use California’s water resources efficiently and sustainably are important  
7 components of their water supply portfolios, but these actions cannot wholly replace SWP supplies.  
8 Neither CEQA nor the Delta Reform Act prohibit DWR from pursuing new Delta conveyance  
9 infrastructure to achieve the fundamental purpose and objectives. Indeed, the Delta Reform Act and  
10 *Delta Plan* recognize that new Delta conveyance infrastructure is an essential part of achieving the  
11 state’s coequal goals for the Delta (Wat. Code §§ 85004(b), 85020(f), 85304).

## 12 **Delta Plan Certification of Consistency: Timing and Relationship to the EIR and** 13 **CEQA Compliance**

14 Some comments suggested that the Delta Conveyance Project is not consistent with the regulatory  
15 policies and recommendations in the *Delta Plan*. Other comments argued that the project should not  
16 be approved because it is not consistent with the *Delta Plan* or because a certification of consistency  
17 has not been prepared and submitted to the DSC. Finally, other comments claimed the CEQA analysis  
18 was inadequate or otherwise incomplete because consistency with the *Delta Plan* had not been  
19 determined.

20 As described in Chapter 1 and Appendix 3E, the *Delta Plan* is a comprehensive, long-term  
21 management plan for the Delta aimed at furthering the coequal goals of the Delta Reform Act. The  
22 *Delta Plan* provides for a distinct regulatory process for activities that qualify as covered actions.  
23 The Delta Reform Act established a self-certification process for demonstrating consistency of  
24 covered actions with the *Delta Plan*. State and local agencies proposing covered actions that occur in  
25 whole or in part in the Delta, prior to initiating implementation of a covered action, must prepare a  
26 written certification of consistency with detailed findings as to whether the covered action is  
27 consistent with applicable *Delta Plan* policies, and must submit that certification to the DSC. The  
28 determination that a proposed activity meets the definition of a covered action is the responsibility  
29 of the state or local agency undertaking the proposed activity.

30 Based on the project footprint location and scope described in Chapter 3, the Delta Conveyance  
31 Project, if approved, would meet the definition of a covered action, as described in Appendix 3E.  
32 DWR provided the table titled Delta Plan Regulatory Policy Crosswalk Table in Appendix 3E to assist  
33 the public in easily identifying information in the EIR and the EPRs that demonstrate the proposed  
34 project and project alternatives ultimately do not result in a potentially significant environmental  
35 impact due to a conflict with any applicable policies in the *Delta Plan*. This table includes 18 separate  
36 *Delta Plan* policies and directs the reader to relevant information contained in the EIR that covers  
37 *Delta Plan* policies related to water resources, ecosystem restoration, Delta as a Place, and general  
38 policies. As stated earlier, the information in the EIR is only part of the evidentiary record that  
39 would support DWR’s certification of consistency.

40 DWR will continue to engage in early consultation with DSC staff, monitor the *Delta Plan* litigation,  
41 and monitor future *Delta Plan* amendments throughout development of a certification of consistency  
42 with the *Delta Plan*. After completion of the CEQA process, if DWR approves the proposed project or  
43 one of the project alternatives, DWR will prepare and file a certification of consistency for that  
44 approved project providing detailed findings regarding the project’s consistency with the applicable



1 *Delta Plan* policies. The Delta Reform Act requires a certification to be filed before DWR initiates  
2 implementation of the project but may certify an EIR and approve a project prior to certification  
3 (Wat. Code § 85225). Therefore, the EIR is not invalid, inadequate, or otherwise compromised under  
4 CEQA because DWR has not yet prepared a certification of consistency with the *Delta Plan* pursuant  
5 to the Delta Reform Act. The CEQA process and the Delta Reform Act certification of consistency  
6 process are two separate, distinct, and independent processes governed by different statutes and  
7 regulations. While the content of the EIR and the administrative record for the EIR can be used to  
8 inform the certification of consistency process, DWR may provide additional details to the DSC in a  
9 certification of consistency and the administrative record for that document beyond those that are  
10 contained in the EIR or the EIR administrative record.

## 11 **California Water Resilience Portfolio**

12 Some comments suggested the Delta Conveyance Project needed to be considered with, was not  
13 considered with, should be consistent with, was consistent with, or was not consistent with the  
14 *California Water Resilience Portfolio* (California Natural Resources Agency et al. 2020). Other  
15 comments identified and described this portfolio in the context of their comments on the Delta  
16 Conveyance Project.

17 There is no requirement in CEQA or any other law that requires DWR to analyze and make a formal  
18 finding that the project is consistent with the *California Water Resilience Portfolio*. However, as  
19 described in Chapter 30, *Climate Change*, the Delta Conveyance Project “supports statewide  
20 adaptation needs articulated in the *California Water Resilience Portfolio* to diversify local supplies  
21 and prepare for hotter conditions and more intense floods and droughts by increasing the average  
22 annual SWP deliveries for the long-term average, dry, and critical water years.”

23 DWR’s project objectives include consistency with the *California Water Resilience Portfolio* as  
24 described in Chapter 2. DWR is one of the state agencies guided by the actions identified in this  
25 portfolio. Executive Order N-10-19 (signed in 2019) directed the California Natural Resources  
26 Agency, the California Environmental Protection Agency, and the California Department of Food and  
27 Agriculture to develop a comprehensive strategy for building a climate-resilient water system and  
28 ensuring healthy waterways through the twenty-first century. The *California Water Resilience*  
29 *Portfolio*, which was released after public comment on July 28, 2020, identifies a suite of  
30 complementary actions to ensure safe and resilient water supplies, flood protection, and healthy  
31 waterways for the state’s communities, economy, and environment. As part of the Executive Order  
32 and the portfolio, the Governor emphasized the need for actions that provide multiple benefits, use  
33 natural infrastructure such as forests and floodplains, embrace new technologies, encourage  
34 regional approaches, and build integration across state government and partnerships across diverse  
35 interests.

36 One of the projects identified in the portfolio to modernize inter-regional conveyance to help  
37 regions capture, store, and move water is to plan, permit, and build new diversion and conveyance  
38 facilities (such as a tunnel) in the Delta to safeguard SWP deliveries in the face of climate change and  
39 other risks. DWR’s evaluation of the Delta Conveyance Project is consistent with the portfolio  
40 approach. Additionally, the SWP provides a critical water supply for much of the state and serves as  
41 a foundation for the important local water supply and resiliency programs included in the portfolio.  
42 The new diversion and conveyance facilities in the Delta identified by the portfolio are just one  
43 action of numerous other local and regional water management and conservation actions that are

1 described. These actions are occurring concurrently, recognizing that multiple actions, including  
2 local actions, are needed to improve California’s water supply resilience.

3 Chapter 6, *Water Supply*, and Appendix 6A, *Water Supply 2040 Analysis*, confirm that the Delta  
4 Conveyance Project will address multiple risks to SWP supplies consistent with the portfolio’s  
5 overarching objectives.

6 The state published a report in January 2021 titled *California Water Resilience Portfolio Progress*  
7 *Report* (California Natural Resources Agency et al. 2021) that documented the state’s efforts to  
8 implement the portfolio. The report describes the progress state agencies made in carrying out the  
9 142 separate actions identified in the portfolio over the previous 18 months and describes the  
10 coordination that occurred between state agencies and local agencies across the state to address  
11 water challenges during that time. Some of the key areas of progress related to regional and local  
12 drinking water supply and groundwater supply challenges since July 2020 are listed here.

- 13 • Financial assistance from the Safe and Affordable Fund for Equity and Resilience program was  
14 provided to 141 communities and 364 households for interim drinking water solutions, 185  
15 communities for planning assistance, and 126 communities for long-term solutions to safe  
16 drinking water problems.
- 17 • DWR and the State Water Board invested \$92 million in state funds to assist 48 separate small  
18 communities across the state with drought-related drinking water supply problems.
- 19 • The state awarded \$26 million to local agencies for the construction of local projects, allocated  
20 an additional \$300 million for planning and projects, and established a new \$50 million grant  
21 program to support implementing GSPs.
- 22 • DWR began airborne electromagnetic geophysical surveys in groundwater basins along the  
23 Central Coast to inform groundwater sustainability agencies (GSAs) and counties seeking to  
24 manage their groundwater sustainably and to support land use planning efforts.

25 For comments suggesting alternatives to the Delta Conveyance Project be considered, including  
26 other actions in the *California Water Resilience Portfolio*, please see Common Response 3.

## 27 **California’s Water Supply Strategy**

28 Some comments asserted that DWR should have studied an alternative to the Delta Conveyance  
29 Project based on *California’s Water Supply Strategy* (California Natural Resources Agency et al.  
30 2022) or asserted that the Delta Conveyance Project must be consistent with the strategy. Other  
31 comments identified or described this strategy in the context of the commenter’s support or  
32 opposition to the Delta Conveyance Project.

33 As described in Common Response 6, *Climate Resilience and Adaptation, California’s Water Supply*  
34 *Strategy* calls on state agencies to prioritize actions that will safeguard California’s water resources  
35 against the anticipated effects of climate change. The Governor’s strategy specifically identifies the  
36 Delta Conveyance Project as a key project that would improve the flexibility of current water  
37 systems to move water throughout the state and a critical element of combating the effects of  
38 climate change. Additional information on how climate change was considered in the EIR can be  
39 found in Chapter 30, and associated appendices; Common Response 1; Common Response 6;  
40 Common Response 4, *No Project Alternative Description and Analysis*; and Common Response 9,  
41 *Hydrologic Modeling and Approach*.

1 PWAs throughout California are already pursuing local or regional water supply resiliency projects  
2 such as recycling, groundwater recharge, storage, and conservation as described in Common  
3 Response 5. These activities support and are consistent with the activities described in *California's*  
4 *Water Supply Strategy*.

5 There is no requirement in CEQA or any other law that requires DWR to analyze and make a formal  
6 finding that the project is consistent with *California's Water Supply Strategy*. Please see Common  
7 Response 3 regarding the reasonable range of alternatives and explaining why alternative water  
8 supply strategies that do not include measures to make SWP supplies more reliable are infeasible  
9 because they fail to achieve the fundamental purpose of the project. Please also see Chapter 6, *Water*  
10 *Supply*, for a description of alternative sources of water, such as recycled water, desalinated water,  
11 and stormwater, that are becoming more commonplace as part of California's water supply to  
12 improve water supply reliability and the state's ability to withstand drought conditions.

### 13 **Sustainable Groundwater Management Act and Groundwater Sustainability** 14 **Plans**

15 Multiple comments asserted that DWR should have analyzed, but failed to analyze the Delta  
16 Conveyance Project's impacts in the context of efforts by certain GSAs to implement their GSPs or to  
17 develop alternatives to GSPs under the SGMA. Others asserted that the Delta Conveyance Project  
18 should be but is not consistent with SGMA implementation. Comments made direct references and  
19 indirect references to multiple groundwater sustainability plans, concerns regarding the potential  
20 for the project to interfere with the successful implementation of those plans and compliance with  
21 requirements set forth under SGMA, and suitability of the analysis conducted for the EIR compared  
22 to the local analysis conducted as part of the GSP development process. The GSPs specifically  
23 referenced in comments are listed here.

- 24 • The successful implementation of two GSPs were referenced specifically: South American  
25 Subbasin GSP and East Contra Costa Subbasin GSP.
- 26 • Three GSPs were referenced indirectly: North American, South American, and Cosumnes  
27 Subbasin GSPs as part of the CoSANA numerical flow model.

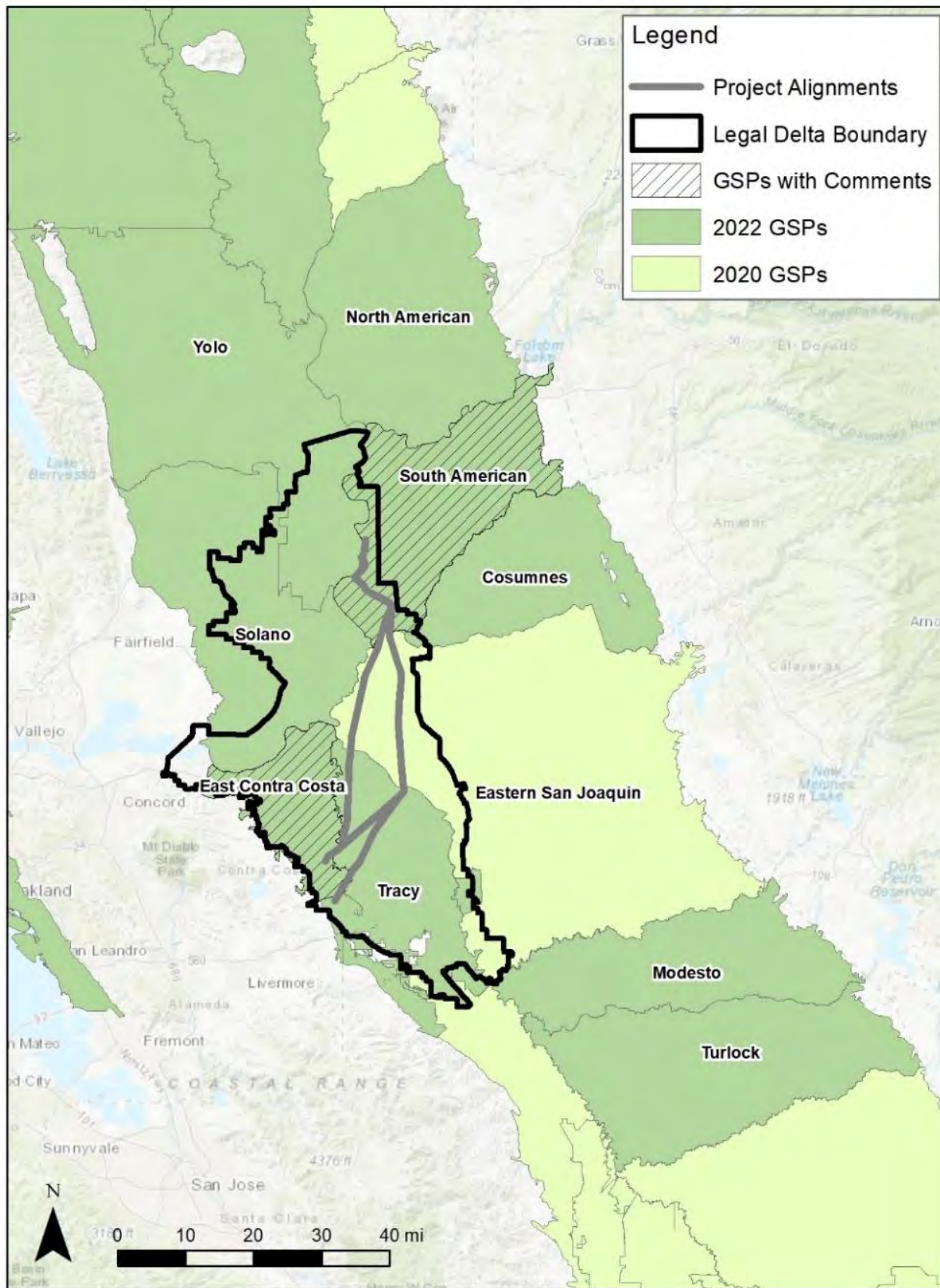
28 SGMA, which was enacted in 2014 and took effect January 1, 2015, is discussed in Chapter 8,  
29 *Groundwater*. The act required the formation of GSAs, which are charged with the preparation and  
30 implementation of GSPs. Specifically, SGMA required that GSAs managing medium- and high-priority  
31 groundwater basins and subbasins that are considered to be in critical overdraft condition submit  
32 their GSPs by January 31, 2020, and that GSAs managing all other noncritically overdrafted medium-  
33 and high-priority basins and subbasins must submit their GSPs by January 31, 2022. The currently  
34 available GSPs in the geographic domain of the DeltaGW model used for the groundwater analyses in  
35 Chapter 8 are listed in Table CR8-1. As shown in the table, no plans were submitted to the state  
36 before the date of release of the Delta Conveyance Project Notice of Preparation (NOP) on January  
37 15, 2020; hence, none were required to be, nor were any included, in the analyses published in the  
38 public draft of the Delta Conveyance Project EIR. (Refer to Common Response 1 regarding the  
39 environmental baseline for the project.) However, DWR has included information in this Common  
40 Response because of the interest from commenters on this topic. Although these GSPs for  
41 noncritically overdrafted basins were not available before the release date of the Delta Conveyance  
42 Project NOP, they have been considered as part of the preparation of this Common Response in light  
43 of the information contained in Chapter 8.

1 The Eastern San Joaquin GSP was submitted on January 29, 2020, and relevant data from the  
 2 groundwater model used for GSP development was incorporated into the DeltaGW model. The GSPs  
 3 covering areas in the DeltaGW model domain are discussed later in this Common Response. A map  
 4 showing the 2020 (critically overdrafted) and 2022 (noncritically overdrafted) subbasin GSPs in the  
 5 project area is provided as Figure CR8-1.

6 **Table CR8-1. Status of Groundwater Sustainability Plans in DeltaGW Model Domain**

Basin/Subbasin	Date Submitted to DWR	Date Posted by DWR	Current Status of DWR's Review and Approval
SACRAMENTO VALLEY—NORTH AMERICAN	1/24/2022	1/31/2022	Review in Progress
SAN JOAQUIN VALLEY—COSUMNES	1/27/2022	2/7/2022	Review in Progress
SACRAMENTO VALLEY—SOUTH AMERICAN	1/27/2022	2/14/2022	Review in Progress
SACRAMENTO VALLEY—SOLANO	1/27/2022	2/7/2022	Review in Progress
SAN JOAQUIN VALLEY—TRACY	1/28/2022	2/7/2022	Review in Progress
SAN JOAQUIN VALLEY—EASTERN SAN JOAQUIN	1/29/2020	1/31/2020	Approved by DWR on March 2, 2023
SAN JOAQUIN VALLEY—MODESTO	1/31/2022	2/14/2022	Review in Progress
SACRAMENTO VALLEY—YOLO	1/28/2022	2/14/2022	Review in Progress
SAN JOAQUIN VALLEY—EAST CONTRA COSTA	1/25/2022	2/7/2022	Review in Progress

7



1  
2 **Figure CR8-1. Map of Groundwater Subbasins with GSP Due Dates in DeltaGW Model Domain**

1 Of all the subbasins underlying the alternatives' alignments, only one GSP listed in Table CR8-1 (the  
2 critically overdrafted Eastern San Joaquin Subbasin GSP) was available when the Draft EIR was  
3 prepared. The other GSPs, which are for medium- and high-priority basins with noncritically  
4 overdrafted conditions, were not available until 2022. The discussion in the sections that follow  
5 provides a brief overview of the information and content in Chapter 8 as it generally relates to the  
6 SGMA and GSPs. Under each subsection, there is a discussion of the specific criteria that SGMA  
7 requires the GSPs to consider and evaluate and the relationship to the impact analysis contained in  
8 Chapter 8.

## 9 **EIR Groundwater Impact Analysis and Groundwater Sustainability Plans**

10 As described in Chapter 8, Impact GW-2: *Changes in Groundwater Elevations* and GW-4: *Changes to*  
11 *Long-Term Change in Groundwater Storage*, construction and operation of the Delta Conveyance  
12 Project would not substantially decrease groundwater elevations in or around the Delta region  
13 (less-than-significant determination) nor substantially reduce groundwater in storage (no impact on  
14 in-Delta groundwater storage). Construction and operation of the Delta Conveyance Project also  
15 would not negatively impact the ability of subbasins in the Delta to implement recharge projects  
16 because such recharge projects would be constructed and operated by the Subbasin GSAs or  
17 independent entities and would not be co-located with Delta Conveyance Project infrastructure or  
18 facilities. Additionally, these recharge projects are expected to draw recharge waters from local  
19 rivers and creeks or from the California Aqueduct or the Delta-Mendota Canal and therefore would  
20 not be dependent on the Delta Conveyance Project.

21 Potential impacts associated with localized groundwater effects during construction of the Delta  
22 Conveyance Project are primarily related to construction dewatering and are described in Impact  
23 GW-2: *Changes in Groundwater Elevations*, Impact GW-3: *Reduction in Groundwater Levels Affecting*  
24 *Supply Wells*, and Impact GW-4: *Changes to Long-Term Change in Groundwater Storage*. Dewatering  
25 and seepage cutoff walls would be required for construction of the intake facilities and the Southern  
26 Forebay Emergency Spillway as discussed in the EPRs and Common Response 10, *Surface Water*  
27 *Quality and Groundwater Resources*. As described in both Chapter 3 and Common Response 10, field  
28 investigations would be conducted prior to and during construction to assess subsurface  
29 geotechnical conditions, perform site-specific pump tests, and design the cutoff walls. Cutoff walls  
30 would be constructed from materials with very low permeabilities in the  $10^{-6}$  to  $10^{-7}$  cm/s range  
31 (equivalent to the permeability of clays) with a very low permeability layer (such as clay) at the  
32 bottom and would extend up to 200 feet below the ground surface. The cutoff walls would isolate  
33 the excavation sites from adjacent surface water and groundwater. Based on previous experiences  
34 along the Sacramento River and similar geological areas, cutoff walls would move the groundwater  
35 flow path around the excavation. In addition, rigorous monitoring and testing will be conducted  
36 during construction, and test results will be reported back to the permitting agency as part of the  
37 permit requirements. The standards to which the cutoff walls and embankments would be  
38 constructed is discussed in Common Response 10. The cutoff walls would limit the reduction of  
39 external groundwater levels during dewatering activities inside the cutoff walls, and limit mounding  
40 of water external to the walls during operations when internal groundwater levels are higher than  
41 the surrounding groundwater levels. At both locations where dewatering would occur during  
42 construction, perimeter wells and levee toe well points would be used to monitor for substantial  
43 changes in groundwater elevations and allow for the discharge of captured dewatered water back  
44 into the subsurface on the external side of the deep cutoff walls, should substantial changes occur.  
45 These wells would also be used to extract mounded water for return to the sedimentation basins if

1 needed to maintain local groundwater levels. Mitigation Measure GW-1: *Maintain Groundwater*  
2 *Supplies in Affected Areas* would monitor for these conditions and adjust construction practices as  
3 needed. Therefore, the Delta Conveyance Project would not result in an exceedance of GSP-  
4 established minimum thresholds related to successful GSP implementation nor create other impacts  
5 from mounding (such as root zone inundation).

6 As will be detailed in the subsections below, the information contained in Chapter 8 of the EIR  
7 demonstrates the following:

- 8 ● Consistency with the climate change assumptions contained in the GSPs because similar  
9 datasets were used and therefore the analyses performed in the EIR and in the Delta GSPs are  
10 comparable. Therefore, DWR need not re-model groundwater impacts using the same climate  
11 change assumptions as in the GSPs because the results would be nearly identical.
- 12 ● No conflict with the GSPs related to undesirable effects on groundwater levels and the volume of  
13 groundwater in storage because of the strict design standards for cutoff walls during  
14 construction and the temporary and limited extent of dewatering activities. The standards to  
15 which the cutoff walls and embankments would be constructed are discussed in Common  
16 Response 10, along with the monitoring required by the project's permits and implementation  
17 of Mitigation Measure GW-1: *Maintain Groundwater Supplies in Affected Areas*.
- 18 ● No conflicts with GSPs related to undesirable effects on groundwater quality because of  
19 implementation of construction best management practices to control potential for spills or  
20 releases of construction-related contaminants using proven methods and practices; depth of  
21 dewatering would limit the potential for vertical gradients and higher-salinity connate  
22 (depositional) water upwelling; limited changes in hydraulic gradient would limit the potential  
23 for contaminant plume mobilization; and because of the strict design standards for cutoff walls  
24 during construction and the monitoring required per the project's permits, in addition to the  
25 implementation of Mitigation Measure GW-1: *Maintain Groundwater Supplies in Affected Areas*.
- 26 ● No conflicts with GSPs related to undesirable effects on interconnected surface water and  
27 groundwater dependent ecosystems because of limited changes in surface water and  
28 groundwater interaction as a result of operations; and because of the strict design standards for  
29 cutoff walls during construction and the monitoring required per the project's permits, in  
30 addition to the implementation of Mitigation Measure GW-1: *Maintain Groundwater Supplies in*  
31 *Affected Areas*.
- 32 ● No conflicts with GSPs related to undesirable effects related to inelastic land subsidence because  
33 groundwater extraction below the Corcoran Clay layer would not occur and because of soil  
34 characteristics in the area of dewatering (i.e., lack of peaty soils).
- 35 ● No conflicts with GSPs related to undesirable effects related to seawater intrusion because  
36 project operations would have less-than-significant effects on X2 locations and Delta water  
37 quality related to salinity. The location of the project's intakes in the north Delta would not  
38 influence the location of X2 or salinity to a degree that would conflict with GSPs.

### 39 **Climate Change Assumptions**

40 Under SGMA, GSAs are required to develop project water budgets to estimate future baseline  
41 conditions of supply, demand, and aquifer response to GSP implementation. To assist with the  
42 development of climate change assumptions for GSP water budgets in this EIR, DWR developed the  
43 *DWR-Provided Climate Change Data and Guidance for Use During Groundwater Sustainability Plan*

1 *Development* (California Department of Water Resources 2018), along with several datasets for GSAs  
2 to use. Datasets provided by DWR were developed based on the Water Storage Investment Program  
3 analysis for projected climate conditions centered around 2030 and 2070. GSAs are not required to  
4 use DWR-provided climate change data or methods, but they need to adhere to the requirements in  
5 the GSP regulations (Cal Code Regs., tit. 23, § 350 et seq.).

6 In order to maintain consistency across the EIR, the groundwater analyses utilize the climate change  
7 assumptions developed for the surface water analysis. These climate change assumptions are  
8 described in Chapter 30 of the EIR. As described in Chapter 30, the surface water analysis conducted  
9 using the CalSim 3 model was run with inputs based on year 2040 (climate period 2026–2055)  
10 anticipated conditions. Ten CMIP5 global climate models and two GHG concentration scenarios (RCP  
11 4.5 and RCP 8.5) were used to develop 20 climate model projections. These projections were then  
12 downscaled using the Localized Constructed Analogs method to develop the 2040 (2026–2055)  
13 Central Tendency climate change scenario, based on temperature and precipitation projections from  
14 the 20-model ensemble. The 2040 Central Tendency climate change scenario was used to  
15 understand climate conditions with and without the project near the time of completion of  
16 construction. Generally consistent with other relatively recent large projects or programs (e.g., Bay  
17 Delta Conservation Plan/California WaterFix Analysis, Water Storage Investment Program  
18 Application, SGMA, Reinitiation of Consultation on the Long-Term Operations of SWP and CVP, and  
19 the SWP Incidental Take Permit), a quantile mapping approach is used in the EIR to adjust historical  
20 daily temperature and precipitation time series based on the climate projections. In summary, the  
21 climate change assumptions utilized in the CalSim3 surface water modeling, and in turn the  
22 groundwater model, are generally consistent with implementation of, or information in, the GSPs,  
23 but employ a slightly different timeline.

#### 24 **Groundwater Levels**

25 Project impacts on groundwater levels were analyzed in Chapter 8 under Impact GW-2. The GSPs  
26 identify representative monitoring wells proposed to represent the groundwater levels in each GSP  
27 area. Measurements from these representative monitoring wells were used to establish numerical  
28 minimum thresholds for groundwater levels, and these thresholds, along with definitions of  
29 undesirable SGMA impacts, define whether a basin has achieved sustainability. The modeling  
30 conducted and described in Chapter 8 concludes that groundwater levels are not anticipated to  
31 fluctuate by more than 5 feet due to project operations. These changes in groundwater elevations  
32 are within the normal range of groundwater elevation fluctuations with changing hydrologic  
33 conditions for these basins. (See the discussion of Impact GW-2 in Chapter 8 for additional detail.)

34 Furthermore, for all subbasins in which dewatering would occur (i.e., South American Subbasin and  
35 East Contra Costa Subbasin), the definition of undesirable results requires the exceedance of  
36 minimum thresholds at a defined percentage of representative monitoring sites for at least 2  
37 consecutive years (3 years for the South American Subbasin and the East Contra Costa Subbasin).  
38 Construction dewatering at any one location is not anticipated to last more than a year and will  
39 typically last less than 6 months (Delta Conveyance Design and Construction Authority 2022a,  
40 2022b). As described earlier in this Common Response and within Common Response 10, project  
41 construction would require obtaining and conforming with strict industry design standards for the  
42 design and construction of cutoff walls and levees. Cutoff walls constructed to standards similar to  
43 those required by the U.S. Army Corps of Engineers (USACE) and Central Valley Flood Protection  
44 Board require the use of low permeability material, thus substantially limiting the reduction of  
45 external groundwater levels during internal dewatering activities and limiting mounding of



1 groundwater external to the walls during operations when basin levels are higher than the  
2 surrounding groundwater levels. Furthermore, implementation of Mitigation Measure GW-1:  
3 *Maintain Groundwater Supplies in Affected Areas* will monitor groundwater levels during  
4 construction using perimeter well systems and will identify if and when construction practices  
5 require adjustment based on observed groundwater level changes. Construction practice  
6 adjustments could include discharging captured dewatered water back into the subsurface on the  
7 external side of the deep cutoff walls or extraction of groundwater outside the cutoff walls. Overall,  
8 dewatering activities would be temporary and limited in spatial extent, and they would occur in less  
9 than the time identified for undesirable results in the two subbasins where impacts could occur.  
10 Therefore, construction and operation of the Delta Conveyance Project would not conflict with the  
11 implementation of the GSPs because of potential impacts on groundwater levels.

## 12 **Groundwater Storage**

13 Project impacts on the volume of groundwater in storage (change in storage) were analyzed in  
14 Chapter 8 under Impact GW-4. The representative monitoring wells were used for establishing the  
15 minimum thresholds for the long-term change in groundwater storage for achieving sustainability  
16 under SGMA. Modeling performed for the Draft EIR using the DeltaGW model, which is described in  
17 Chapter 8 and Appendix 8A, *Delta Groundwater Model: Development and Calibration*, demonstrates  
18 there would be no substantial adverse change in groundwater storage as a result of the project.

19 Construction of the intake facilities and Southern Forebay Emergency Spillway would require  
20 dewatering during construction. However, as previously described under sections titled *EIR*  
21 *Groundwater Impact Analysis and Groundwater Sustainability Plans* and *Groundwater Levels*,  
22 construction at the intakes will require obtaining and complying with a USACE Section 408 permit  
23 because the project will be affecting federal flood control levees that are part of the Sacramento  
24 River Flood Control Project. The Southern Forebay Emergency Spillway, which would be an element  
25 of all alternatives with the exception of Alternative 5, would not affect federal flood control levees  
26 but will be constructed in accordance with strict design criteria similar to those required by the U.S.  
27 Department of the Interior Bureau of Reclamation (Reclamation), Central Valley Flood Protection  
28 Board, and USACE for similar projects. These criteria include required design specifications for  
29 cutoff walls as well as testing during construction. Cutoff walls constructed to these standards would  
30 substantially limit the reduction of external groundwater levels during internal dewatering  
31 activities. Furthermore, implementation of Mitigation Measure GW-1: *Maintain Groundwater*  
32 *Supplies in Affected Areas* would monitor changes in groundwater elevations at perimeter wells and  
33 levee toe well points, and adjustments to construction practices would be made if required to  
34 maintain groundwater levels outside the cutoff walls.

35 Given the description above, construction of the Delta Conveyance Project would not conflict with  
36 the implementation of the GSPs associated with groundwater storage. The EIR similarly finds that  
37 operation of the project would not significantly impact groundwater storage, as the seepage cutoff  
38 walls would remain in place.

## 39 **Groundwater Quality**

40 Project impacts on groundwater quality are analyzed in multiple locations in the EIR, including in  
41 Chapter 8 under Impact GW-7: *Degradation of Groundwater Quality*, Chapter 9, *Water Quality*, under  
42 Impact WQ-5: *Effects on Electrical Conductivity Resulting from Facility Operations and Maintenance*,  
43 and Chapter 25, *Hazards, Hazardous Materials, and Wildfire*, under Impact HAZ-1: *Create a*  
44 *Substantial Hazard to the Public or the Environment through the Routine Transport, Use, or Disposal of*

1 *Hazardous Materials*. Since groundwater quality can limit local water supplies and beneficial uses,  
2 GSPs must characterize current water quality and identify minimum thresholds at which  
3 undesirable results would occur.

4 Four ways in which the project could potentially impact groundwater quality are described in the  
5 EIR:

- 6 1. Construction-related releases of contaminants.
- 7 2. Saline water intrusion.
- 8 3. Connate (depositional; water trapped in the pores of sedimentary rocks) water upwelling.
- 9 4. Movement of existing groundwater contamination plumes.

10 DWR believes the four assessments conducted for the groundwater quality assessment are an  
11 accurate representation of potential construction- and operational-related impacts for the purposes  
12 of CEQA compliance.

13 Construction best management practices and requirements of the project's stormwater pollution  
14 prevention plan would minimize, avoid, or reduce to less than significant potential releases of  
15 construction-related contaminants using proven methods and practices. Increased saline water  
16 intrusion from the Delta as a result of project operation and construction is linked to project impacts  
17 on interconnected surface waters (the drawing of water from surface waters into the groundwater  
18 basin). This impact will be less than significant, as described in Chapter 8, Impact GW-1: *Changes in*  
19 *Stream Gains or Losses in Various Interconnected Stream Reaches*, and as described later in this  
20 Common Response. Therefore, conflicts with the implementation of the GSPs associated with  
21 groundwater quality and construction-related releases of contaminants and saline water intrusion  
22 would not occur.

23 Connate water upwelling would not occur as project dewatering is relatively shallow  
24 (approximately 160 feet below grade or shallower) and would not result in vertical gradients deep  
25 enough to draw highly saline connate groundwater from the lower aquifer system (1,000 to 3,000  
26 feet below grade) upward. Contaminant plume mobilization would not occur because changes in  
27 hydraulic gradient would be small as shown in Chapter 8 under Impact GW-7. As shown in the  
28 figures depicting maximum groundwater elevation difference contours for each alternative in the  
29 *Alternatives Impacts* section of Appendix 8B, *Impact Analysis: Groundwater Model Results*, the change  
30 in groundwater levels by project operation for all alternatives is expected to be less than 5 feet and,  
31 in most instances, less than 2 feet. A change in groundwater levels of less than 2 to 3 feet is unlikely  
32 to cause a substantial change in groundwater flow paths or groundwater hydraulic head (a measure  
33 of elevation) because such a change would be small relative to the size of the groundwater basin,  
34 resulting in little change in slope to the flow paths. Therefore, this is a relatively minor change and  
35 would not mobilize existing groundwater contaminant plumes or change groundwater quality.  
36 Substantial construction-related changes in groundwater levels resulting from dewatering will not  
37 occur as construction dewatering would occur within cutoff walls designed to meet strict design  
38 standards for low permeable materials, as already described. In addition, implementation of  
39 Mitigation Measure GW-1: *Maintain Groundwater Supplies in Affected Areas* will monitor  
40 groundwater level and electroconductivity changes outside the cutoff walls and will identify when  
41 construction practices require adjustment to reduce mounding, groundwater level declines, or  
42 salinity changes. Although it is determined that the project would not significantly impact  
43 groundwater quality, Mitigation Measure GW-1, which was included in the Draft EIR, has been

1 revised to include monitoring of electroconductivity at select locations during construction to  
2 provide data confirming the conclusions in the EIR that project construction will not result in  
3 increased saline concentrations. Impact GW-1 and Impact GW-2 remain less than significant prior to  
4 the implementation of the revised mitigation measure, as described in Chapter 8.

5 Therefore, connate water upwelling and the movement of existing groundwater plumes would not  
6 occur during construction or operation, and the Delta Conveyance Project would not conflict with  
7 the implementation of the GSPs associated with groundwater quality.

## 8 **Interconnected Surface Water and Groundwater Dependent Ecosystems**

9 Project impacts on interconnected surface waters are analyzed in Chapter 8 under Impact GW-1.  
10 Generally, modeling the change in annual interconnected surface water interactions between the  
11 project alternatives and existing conditions generated the following:

- 12 • Greatest losses from streams were less than 1% by volume (except Alternatives 2a and 4a for  
13 the San Joaquin River, where loss is about 1.2%).
- 14 • Greatest additions (flow into) streams were 0.4% to greater than 1%.
- 15 • Annual average of impacts ranged from -0.3% (stream losses) to +0.6% (stream gains). (For  
16 details, see the tables in the *Operations* subsection of the *Impacts of the Project Alternatives on*  
17 *Groundwater* section in Chapter 8.)

18 Overall, the modeling shows less-than-significant impacts to interconnected surface waters.  
19 Therefore, the project operations would not cause more surface water to move into the  
20 groundwater aquifers.

21 Localized short-term impacts to interconnected surface water at or near the intakes and other  
22 dewatering sites would be minimal as construction at these locations would include the use of cutoff  
23 walls constructed of low permeable materials or the construction of, or modification to, the levee  
24 system in which cutoff walls are included, as described at the beginning of the section titled *EIR*  
25 *Groundwater Impact Analysis and Groundwater Sustainability Plans* in this Common Response. When  
26 constructed to industry-mandated strict design standards, the cutoff walls substantially limit  
27 reduction of external groundwater levels and thus limit interactions with interconnected surface  
28 waters during internal dewatering activities. In addition, implementation of Mitigation Measure GW-  
29 1: *Maintain Groundwater Supplies in Affected Areas* would monitor groundwater levels outside the  
30 cutoff walls using perimeter wells and levee toe well points and would identify when construction  
31 practices require adjustment based on observed groundwater level changes to maintain stream  
32 gains and losses.

33 Groundwater dependent ecosystems (GDEs) are defined under SGMA as ecological communities or  
34 species that depend on groundwater emerging from aquifers or on groundwater occurring near the  
35 ground surface. GDEs are typically found proximate to surface waters and would be affected  
36 similarly to interconnected surface waters described above. Furthermore, as described in Impact  
37 GW-2 and Impact GW-4, substantial changes in groundwater elevation would not occur. Impacts to  
38 GDEs as a result of changes in groundwater would not occur. This EIR addresses other temporary or  
39 permanent impacts to GDEs by identifying and evaluating potential impacts to all natural systems  
40 and habitat supported by groundwater that could be impacted by the project. Chapter 13, *Terrestrial*  
41 *Biological Resources*, discusses specific habitat types, including GDEs (wetlands and riparian  
42 habitat), and the associated potential for other project impacts.

## 1 **Inelastic Land Subsidence**

2 Inelastic land subsidence is a permanent gradual settling or sudden sinking of the Earth's surface  
3 resulting from removal or displacement of subsurface earth materials. Land subsidence in California  
4 can be caused by compaction associated with groundwater level decreases, oil and gas withdrawals,  
5 and the drainage of organic soils. Project impacts on land subsidence were analyzed in Chapter 8  
6 under Impact GW-6: *Damage to Major Conveyance Facilities Resulting from Land Subsidence* and  
7 Chapter 11, *Soils*, under Impact SOILS-3: *Property Loss, Personal Injury, or Death from Instability,*  
8 *Failure, and Damage as a Result of Constructing the Proposed Water Conveyance Facilities on or in*  
9 *Soils Subject to Subsidence*. The principal mechanism for potential land subsidence in the study area  
10 would be groundwater extraction below the Corcoran Clay layer. In addition, dewatering has the  
11 potential to cause limited oxidation of peaty soils in localized areas directly adjacent to the  
12 dewatering sites.

13 As discussed in the *Volume 1: Delta Conveyance Final Draft Engineering Project Report—Central and*  
14 *Eastern Options* and *Volume 1: Delta Conveyance Final Draft Engineering Project Report—Bethany*  
15 *Reservoir Alternative* (Delta Conveyance Design and Construction Authority 2022a, 2022b), all  
16 dewatering pumping would occur at depths above 165 feet below the ground surface, which is  
17 above the Corcoran Clay layer (a regional aquitard). Construction dewatering would occur inside  
18 cutoff walls constructed of low permeability materials. The dewatering sites are located outside the  
19 areas with the greatest soil organic matter content (see the figure titled Soil Organic Matter Content  
20 in Near-Surface Soils in Chapter 11). Dewatering sites would be isolated from the regional  
21 groundwater by cutoff walls. Therefore, the extent of organic soils exposure to air would be  
22 minimized or would not occur given the lack of soil with organic matter content. In addition, the  
23 duration of exposure would be short (less than about 1 year) relative to the time needed for  
24 oxidation to happen to the extent that subsidence occurs. Finally, measures taken to conform to  
25 state and federal design standards would reduce the potential hazard of subsidence to acceptable  
26 levels by avoiding construction directly on, or otherwise stabilizing, the soil material that is prone to  
27 subsidence.

## 28 **Seawater Intrusion**

29 The sustainable management criterion under SGMA is seawater intrusion, not saltwater intrusion.  
30 Therefore, many comments received on the Chapter 8 analyses fall under the sustainable  
31 management criterion of degraded groundwater quality. However, some of the comments seem to  
32 imply seawater intrusion by reference of saltwater intrusion, which is discussed in the section titled  
33 *Groundwater Quality*. Seawater intrusion under SGMA is not an applicable sustainability indicator in  
34 the subbasins where the Delta Conveyance Project would be located, except for the East Contra  
35 Costa Subbasin. There has been no evidence of seawater intrusion in the East Contra Costa Subbasin  
36 in the past or the present. Such intrusion is identified as a potential risk in the future as a result of  
37 sea level rise or unsustainable levels of groundwater pumping. Project construction would be  
38 completed before substantial changes in sea level rise occur. In addition, considering the force of sea  
39 level rise on seawater intrusion into the Delta compared to the limited dewatering effects on local  
40 groundwater elevations along with the provision of Mitigation Measure GW-1: *Maintain*  
41 *Groundwater Supplies in Affected Areas*, construction dewatering would not draw seawater all the  
42 way up to the intakes or other construction sites. Project operations would not significantly alter X2  
43 locations outside of the winter and spring, when X2 position is already much further west than  
44 during the summer and fall months (see the section titled *Impacts of the Project Alternatives with*  
45 *Climate Change* in Chapter 30). If the most eastward location of X2 does not change substantially, the

1 potential for seawater intrusion does not change substantially. Common Response 10 provides  
2 additional information regarding sea level rise and seawater intrusion.

### 3 **State Water Resources Control Board Authorities and** 4 **Responsibilities**

5 This section provides additional information related to comments on key aspects of past and present  
6 planning efforts of the State Water Board, as well as State Water Board authorities and  
7 responsibilities. These planning efforts are described throughout the EIR where appropriate (e.g.,  
8 Chapter 1 and Chapter 9).

### 9 **Designated Beneficial Uses and Water Rights**

10 Several comments asserted that the EIR did not adequately consider protections for designated  
11 beneficial uses. In addition, while commenters may not have always used the term *beneficial use* in a  
12 comment, multiple comments argued that the water supplied by the SWP, DWR, or the PWAs should  
13 not be used for certain uses or should be used for other uses. Comments also asserted that existing  
14 uses of water are or are not appropriate or correct, or recommended how the DWR should allocate  
15 or provide water. In addition, numerous comments expressed concern that the Delta Conveyance  
16 Project would affect or alter existing water rights. Some comments requested clarification on  
17 whether the planned operation of the project is consistent with the legal requirements for diverting  
18 flows from the Sacramento River. Several comments said that the Delta Conveyance Project would  
19 adversely affect other water right holders. Other comments claimed that operation of the project  
20 would not abide by existing water rights, would be out of compliance with existing water rights, or  
21 would otherwise be contrary to existing water rights and the protection of beneficial uses.

22 One of the State Water Board's responsibilities is to ensure that the state's water is put to the best  
23 possible use and that this use is in the public's best interest. This charge is reflected in part by the  
24 designation of "beneficial uses" established through the State Water Board's water quality control  
25 planning process. These beneficial uses are identified in each water quality control plan (basin plan)  
26 issued by the State Water Board. There are numerous designated beneficial uses for multiple waters  
27 all over the state; some beneficial uses include municipal and industrial, agricultural, recreational,  
28 and fish and wildlife uses. The State Water Board uses its authorities to protect water quality that  
29 affects beneficial uses in part through the *Water Quality Control Plan for the San Francisco*  
30 *Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta WQCP) (State Water Resources Control  
31 Board 1995, amended in 2006). The State Water Board is responsible for adopting and updating the  
32 Bay-Delta WQCP, which establishes water quality objectives, including flow requirements, needed to  
33 provide reasonable protection of beneficial uses of water in the watershed, as well as an  
34 implementation program to achieve the water quality objectives. Key elements of the Bay-Delta  
35 WQCP include salinity-related water quality objectives for the reasonable protection of various  
36 beneficial uses, including irrigated agriculture and municipal water supply.

37 Another State Water Board authority is to administer and manage water rights in California. A water  
38 right is legal permission to use a reasonable amount of water for a beneficial purpose, such as  
39 domestic use, fishing, farming, or industry. Water rights law is administered by the State Water  
40 Board, and specifically the Division of Water Rights, which acts on behalf of the State Water Board.  
41 The State Water Board is the only agency with authority to administer water rights in California.  
42 Other state agencies, such as DWR, local governments, water districts, and the California Regional

1 Water Quality Control Boards, do not administer water rights. The State Water Board shares the  
2 authority to enforce water right laws with the state courts. Since water is protected for the use and  
3 benefit of all Californians, California's waters cannot be owned by individuals, groups, businesses, or  
4 governmental agencies. However, permits, licenses, and registrations give individuals and others the  
5 right to beneficially use reasonable amounts of water.

6 The Delta Conveyance Project aims to provide a more reliable water supply that is also protective of  
7 beneficial uses; these include the municipal and industrial beneficial uses for approximately 27  
8 million Californians throughout the state and the agricultural beneficial uses for approximately  
9 750,000 acres of farmland. However, DWR has no authority to designate beneficial uses or to  
10 designate for what purposes water is used. DWR has existing water rights and contracts with  
11 various PWAs, and these water rights and contracts allow DWR and the PWAs to beneficially use the  
12 water supply. Chapter 6 describes DWR's water rights.

13 Together with the CVP, the SWP operates to meet the jointly assigned water right requirements in  
14 the Delta. As described in the section titled *Reduced Reliance on the Delta*, PWAs are currently  
15 seeking and will continue to seek opportunities outside of the Delta to improve water supply  
16 reliability and to more efficiently and sustainably manage or reduce water use. For example, PWAs  
17 have individual policies and programs to motivate ratepayers to conserve water. Different PWAs  
18 have the right to take different approaches to managing water supply and demand within their  
19 service area, depending on their individual circumstances. DWR has no power to impose penalties  
20 on individual water users within PWA service areas or require PWAs to more efficiently and  
21 sustainably manage or reduce water use.

22 DWR currently operates the SWP pursuant to State Water Resources Control Board Water Right  
23 Decision 1641 (D-1641), among other requirements (e.g., state and federal endangered species act  
24 requirements). In D-1641, the State Water Board amended the water right license and permits for  
25 the SWP and the CVP to meet certain water quality objectives in the Bay-Delta WQCP. The section  
26 titled *Key Existing Delta Operations Criteria* in Chapter 3 describes the various D-1641 requirements  
27 that DWR operates under in coordination with Reclamation's operations of the CVP, including Delta  
28 Cross Channel gate operations criteria, Rio Vista minimum instream flow criteria, Delta outflow  
29 criteria, and the export to inflow ratio. In addition to these requirements, D-1641 places  
30 responsibility on DWR and Reclamation for measures to ensure that specified water quality  
31 objectives are met. Chapter 9 considers the water quality objectives and beneficial uses in the Bay-  
32 Delta WQCP as well as the implementation of the water quality objectives and requirements in D-  
33 1641. Where appropriate, and throughout the EIR's water quality analysis, different water quality  
34 constituents, such as electrical conductivity (a measure of salinity), are evaluated within the context  
35 of applicable water quality objectives. For example, in Chapter 9, several of the impact analyses,  
36 including Impact WQ-4: *Effects on Chloride Resulting from Facility Operations and Maintenance* and  
37 Impact WQ-5, specifically integrate standards and requirements from various sources, including the  
38 Bay-Delta WQCP. As described in Chapter 9 in the section titled *Summary Comparison of Alternatives*,  
39 the project could potentially result in increased electrical conductivity at some Delta locations.  
40 However, the project would not cause more frequent exceedance of the Bay-Delta WQCP water  
41 quality objectives for protection of agricultural beneficial uses or fish and wildlife beneficial uses  
42 because facility operations under the project would be operated to the electrical conductivity  
43 objectives, as implemented through D-1641. In addition, in Chapter 12, *Fish and Aquatic Resources*,  
44 impact analyses such as Impact AQUA-2: *Effects of Operations and Maintenance of Water Conveyance*  
45 *Facilities on Sacramento River Winter-Run Chinook Salmon*, Impact AQUA-6: *Effects of Operations and*  
46 *Maintenance of Water Conveyance Facilities on Delta Smelt*, and Impact AQUA-7: *Effects of Operations*

1 *and Maintenance of Water Conveyance Facilities on Longfin Smelt* use standards and requirements in  
2 the Bay-Delta WQCP and D-1641 as thresholds of significance. Both Chapter 9 and Chapter 12  
3 determine impacts to be less than significant or less than significant with mitigation incorporated  
4 based on the CEQA impact analysis.

5 As described above, the State Water Board has existing established water quality standards to  
6 protect beneficial uses in the Delta through the Bay-Delta WQCP. Although DWR continues to  
7 participate in the State Water Board's WQCP revision process, it is not responsible, nor does it have  
8 the authority, to identify or establish flow criteria or water quality objectives for the Delta. The  
9 analysis contained within the EIR appropriately considered the existing standards and shows that  
10 the Delta Conveyance Project would meet those requirements or, where appropriate, identified  
11 feasible mitigation measures to reduce potentially significant environmental impacts below the level  
12 of significance. The EIR and the Delta Conveyance Project are not inadequate, incomplete, or  
13 otherwise lacking because they do not identify flow criteria, include water quality objectives, or  
14 otherwise quantify the amount of water that needs to travel through the Delta to the ocean to ensure  
15 the Delta's survival as a functioning ecosystem. The California Department of Fish and Wildlife, U.S.  
16 Fish and Wildlife Service, and National Marine Fisheries Service will determine whether to issue  
17 permits for the project to ensure that there is no jeopardy to species listed as threatened or  
18 endangered, that no designated critical habitat is adversely modified, and, with respect to state-  
19 listed species, that the impacts of the authorized incidental take will be minimized and fully  
20 mitigated. The Delta Conveyance Project's operational criteria and the Compensatory Mitigation  
21 Plan are designed to meet those standards as well.

22 The locations of the north Delta intake facilities that would be constructed under the Delta  
23 Conveyance Project are not currently identified as points of diversion in DWR's water right. Thus, as  
24 described in Chapter 1, in the section titled *Change in Point of Diversion*, prior to constructing the  
25 project, DWR must file a petition with the State Water Board and receive State Water Board  
26 approval to add to the points of diversion in the relevant water right (Wat. Code § 85088.). As part of  
27 this process, the State Water Board will use information from the EIR and information developed as  
28 part of the record for the EIR to inform its decision-making process. However, the process by which  
29 the State Water Board makes its decision regarding the change in the point of diversion to add one  
30 or more new points of diversion is separate from the CEQA process and from DWR's decision  
31 whether to approve the Delta Conveyance Project and certify the EIR under CEQA. To support the  
32 State Water Board's change in point of diversion process, DWR may provide the State Water Board  
33 with additional information beyond that which is contained in the EIR and the EIR record.

34 If the Delta Conveyance Project is approved, DWR will operate the project in compliance with its  
35 existing water rights; DWR is not proposing to increase the total quantity of water permitted for  
36 diversion under its water rights. The project and project alternatives do not include any actions that  
37 would harm in-Delta water rights or modify water deliveries to non-SWP and non-CVP water  
38 contractors. In addition, regardless of its involvement in the project, Reclamation would retain its  
39 authority to operate the relevant CVP Delta facilities in coordination with the SWP and pursuant to  
40 Reclamation's existing water rights.

## 41 **Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem**

42 Some comments on the Draft EIR described the *Development of Flow Criteria for the Sacramento–San*  
43 *Joaquin Delta Ecosystem* (2010 Flow Criteria Report) (State Water Resources Control Board 2010) or  
44 connected this report to the Delta Reform Act and other ongoing actions of other state agencies (e.g.,

1 State Water Board). Comments asserted that the Delta Conveyance Project is inconsistent with the  
2 State Water Board's 2010 Flow Criteria Report, that DWR did not consider the information in the  
3 2010 Flow Criteria Report, or that DWR should implement the 2010 Flow Criteria Report.

4 The State Water Board published the 2010 Flow Criteria Report per the Delta Reform Act (Wat. Code  
5 § 85086(c)(1)) to develop flow criteria needed in the Delta ecosystem "if fishery protection was the  
6 sole purpose for which its waters were put to beneficial use" (State Water Resources Control Board  
7 2010:Note to Readers). The report explains that the criteria are intended to inform the State Water  
8 Board's own "on-going and subsequent proceedings," including the planned update to the 2006 Bay-  
9 Delta WQCP. Water Code Section 85086(c)(1) also provides that the State Water Board's report  
10 would serve to inform the Delta Stewardship Council's *Delta Plan*. The report emphasizes the  
11 artificially narrow scope of the criteria that it was required to develop under the Delta Reform Act  
12 and explains that the criteria report did not consider the allocation of water resources to a particular  
13 diversion or use (i.e., it did not factor in other beneficial uses of water, such as those required for  
14 human health and welfare).

15 The 2010 Flow Criteria Report has no binding regulatory effect on the Delta Conveyance Project, and  
16 the report specifically states in Section 1.1, *Legislative Directive and State Water Board Approach*, of  
17 the Executive Summary that the State Water Board's flow criteria determinations are limited to  
18 protection of aquatic resources in the Delta and did not consider impacts of the 2010 flow criteria on  
19 fish upstream, including sensitive salmon species. Furthermore, the State Water Board is in the  
20 process of updating the Bay-Delta WQCP, as described in the next section, *Updates to the Bay-Delta*  
21 *Water Quality Control Plan or Voluntary Agreements*, and has performed further planning and  
22 analysis of flow requirements for the Delta through the preparation and public release of  
23 subsequent documents.

24 The 2010 Flow Criteria Report was prepared as one of the first steps in the State Water Board's  
25 ongoing water quality control planning process. Multiple reports and regulations have since been  
26 developed and released by the State Water Board pursuant to their various authorities over the last  
27 decade. These are listed below.

- 28 • 2012 *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern*  
29 *Delta Salinity Objectives* (State Water Resources Control Board and California Environmental  
30 Protection Agency 2012).
- 31 • 2017 *Scientific Basis Report in Support of New and Modified Requirements for Inflows from the*  
32 *Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold*  
33 *Water Habitat, and Interior Delta Flows* (State Water Resources Control Board 2017).
- 34 • 2018 *Final Substitute Environmental Document in Support of Potential Changes to the Water*  
35 *Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: San*  
36 *Joaquin River Flows and Southern Delta Water Quality* (State Water Resources Control Board  
37 2018a).
- 38 • 2018 *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta*  
39 *Estuary* (State Water Resources Control Board 2018b).
- 40 • *July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan* (State Water  
41 Resources Control Board 2018c).



- 2023 *Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan* (State Water Resources Control Board et al. 2023).

In addition, the 2010 Flow Criteria Report cannot be implemented by DWR, nor does DWR have the legal authority to implement the 2010 Flow Criteria Report. Finally, a project cannot be inconsistent with the 2010 Flow Criteria Report in violation of any regulation or law because the report itself has no regulatory requirements or authority. Even if the 2010 Flow Criteria Report was enforceable and the Delta Conveyance Project was inconsistent with the report, the EIR exhaustively studied the potential impacts to aquatic species in the Delta and found the impacts to be less than significant or that they can be mitigated to less-than-significant levels based on recommended mitigation measures.

## Updates to the Bay-Delta Water Quality Control Plan and Voluntary Agreements

Several comments asserted that the EIR did not adequately consider ongoing updates by the State Water Board to the Bay-Delta WQCP or adequately consider how voluntary agreements could contribute to implementation of the update. Other comments argued that the Bay-Delta WQCP updates should be part of the project; that the EIR or the Delta Conveyance Project is inadequate, incomplete, or otherwise lacking because it does not identify the amount of water that needs to travel through the Delta to the ocean to sustain the Delta's ecosystem; that the project should be consistent with the Bay-Delta WQCP; or that the Bay-Delta WQCP was not included appropriately in the EIR analysis.

These comments employed a variety of terms to refer to the Bay-Delta WQCP updates, including *Phase 1*, *Phase 2*, *Lower San Joaquin River*, *Sacramento/Delta*, and *Voluntary Agreements*. For the purposes of this Common Response, it is assumed that *Phase 1 and Lower San Joaquin River* refers to the Bay-Delta WQCP Update: San Joaquin River Flows and Southern Delta Salinity; *Phase 2 and Sacramento/Delta* refers to the Bay-Delta WQCP Update: Delta Outflows, Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta Flows; and *Voluntary Agreements* refers to voluntary agreements associated with the Bay-Delta WQCP Update: Delta Outflows, Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta Flows. DWR does not use the term *Phase 1* or *Phase 2* in this Common Response. For responses related to State Water Board activities associated with the Bay-Delta WQCP updates and the baseline conditions, please see Common Response 1, and for responses related to the No Project Alternative, please see Common Response 4.

Since 2008, the State Water Board has been engaged in a process to update the 2006 Bay-Delta WQCP to ensure that beneficial uses of water in the Delta watershed are reasonably protected. It is the role and responsibility of the State Water Board, not DWR, to establish requirements and standards to reasonably protect different beneficial uses in the Bay-Delta WQCP, as discussed in the section titled *Designated Beneficial Uses and Water Rights*. DWR, other water rights holders, waste dischargers, and others are responsible for implementing the requirements and standards described in the Bay-Delta WQCP. DWR currently implements Bay-Delta WQCP standards and requirements primarily through compliance with D-1641. The State Water Board has the authority to establish and amend standards and requirements in the Bay-Delta WQCP and to describe, as part of that authority, the water quality objectives for such things as Delta outflow. The Bay-Delta WQCP updates are ongoing. Common Response 1 provides a summary of more recent activities undertaken by the State Water Board that are related to the Bay-Delta WQCP Update: San Joaquin River Flows

1 and Southern Delta Salinity in Table CR1-1, as well as a discussion of more recent activities  
2 undertaken by the State Water Board that are related to Bay-Delta WQCP Update: Delta Outflows,  
3 Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta Flows.

4 The Bay-Delta WQCP updates were not omitted from the EIR, and DWR appropriately considered  
5 them. Appendix 3C describes the two aspects of the Bay-Delta WQCP updates: (1) Bay-Delta WQCP  
6 Update: San Joaquin River Flows and Southern Delta Salinity and (2) Bay-Delta WQCP Update: Delta  
7 Outflows, Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta  
8 Flows. As described in Common Response 1, the Bay-Delta WQCP Update: San Joaquin River Flows  
9 and Southern Delta Salinity was approved prior to the NOP for the Delta Conveyance Project, but it  
10 has not been implemented. It is not incorporated into the modeling for existing conditions or the No  
11 Project Alternative because implementation has not been adopted by the State Water Board and  
12 implementation remains speculative. Also as described in Common Response 1, Bay-Delta WQCP  
13 Update: San Joaquin River Flows and Southern Delta Salinity is qualitatively considered and  
14 evaluated where appropriate in the cumulative analysis, such as Chapter 9, Water Quality. The State  
15 Water Board initiated a process to update the Sacramento River and Delta tributary inflow and  
16 coldwater habitat, Delta outflow, and interior Delta flow components of the Bay-Delta WQCP in  
17 2012, but that update has not been approved or implemented. This Bay-Delta WQCP Update: Delta  
18 Outflows, Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta  
19 Flows is also qualitatively evaluated as part of the cumulative impact analysis as indicated in Table  
20 3C-2, and where appropriate in the EIR (e.g., Chapter 9), and as described in Common Response 1.

21 Voluntary agreements (VAs), an alternative Bay-Delta WQCP update, are proposed as a voluntary  
22 pathway to achieve reasonable protection of fish and wildlife beneficial uses in the Sacramento  
23 River watershed. The State Water Board is in the process of evaluating and considering the VAs,  
24 including preparing necessary environmental documentation and other technical analyses. DWR has  
25 been participating in the VA process with the State Water Board, the California Department of Fish  
26 and Wildlife, and other voluntary agreement parties since approximately 2018. A memorandum of  
27 understanding (MOU) for VAs proposing updates to the Bay-Delta WQCP and its implementation  
28 titled *Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to*  
29 *Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions* (State  
30 Water Resources Control Board 2022) was received by the State Water Board in March 2022  
31 (amended in August 2022 and November 2022). The signatory parties included state and federal  
32 agencies, local water agencies, private companies, and a nonprofit mutual benefit corporation. The  
33 VAs continued to be considered by the State Water Board after 2022 and into September of 2023.

34 In April 2023, the State Water Board released a Notice of Preparation of Environmental  
35 Documentation for the Tuolumne River Voluntary Agreement and held a scoping meeting in May of  
36 2023; however, there has been no environmental document released by the State Water Board  
37 related to the Tuolumne River. The State Water Board also released the Draft Staff  
38 Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality  
39 Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary for the Sacramento  
40 River and its Tributaries, Delta Eastside Tributaries, and Delta in September 2023, which includes  
41 an evaluation of the VAs in Chapter 9, Proposed Voluntary Agreements (State Water Resources  
42 Control Board 2023). The State Water Board described the process and relationship between VAs  
43 related to the Sacramento River and Lower San Joaquin River in Chapter 9:

44 The analyses presented [in Chapter 9] are not intended to support possible updates to the portions of  
45 the Bay-Delta Plan covering the lower San Joaquin River, which could incorporate lower San Joaquin  
46 River VAs, and would be subject to a separate process and subsequent analysis. The State Water

1 Board commenced a process for considering possible updates to the Bay-Delta Plan for the Tuolumne  
2 River in 2023. While Merced River parties have submitted a VA, the Merced River parties are not  
3 currently signatories to the VA Term Sheet. In the event the Merced River VA is included in the VA  
4 Term Sheet, it would be evaluated similar to the Tuolumne River VA, as would also be the case if a VA  
5 is developed for the Stanislaus River.

6 (State Water Resources Control Board 2023:9-2). As of the preparation of the Final EIR for the Delta  
7 Conveyance Project, the Draft Staff Report/Substitute Environmental Document in Support of  
8 Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento–San  
9 Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and  
10 Delta was in the public comment period, and the State Water Board had not made a decision  
11 regarding the VAs. Thus, the VAs are still in the planning process and have not been approved by the  
12 State Water Board or implemented. Given this status, the VAs are not included in the EIR in existing  
13 conditions, No Project Alternative conditions, or cumulative conditions.

14 In the Delta Conveyance Project EIR, DWR further considered the updates to the Bay-Delta WQCP  
15 and potential VAs beyond the context and requirements of CEQA in Appendix 4C, *Alternate*  
16 *Regulatory Scenario Sensitivity Analysis*. Appendix 4C discusses the ongoing updates to the Bay-Delta  
17 WQCP by the State Water Board and states that updates to the Bay-Delta WQCP could lead to  
18 changes in existing regulatory requirements affecting operations of the SWP. Because the specific  
19 requirements of the Bay-Delta WQCP updates are uncertain as the State Water Board moves through  
20 the steps of the environmental review and the water quality control planning process, it is possible  
21 that the Bay-Delta WQCP could be amended before the Delta Conveyance Project is operational.

22 Given the uncertainty regarding the updates to the Bay-Delta WQCP, Appendix 4C describes a  
23 potential Alternate Regulatory Scenario that considers possible regulatory requirements for water  
24 quality and flow when an updated Bay-Delta WQCP is implemented. The appendix also characterizes  
25 the potential effects of the project under this Alternate Regulatory Scenario. The description of an  
26 Alternate Regulatory Scenario in Appendix 4C includes some provisions from the March 2022 MOU,  
27 though the scenario is not intended to fully represent the March 2022 MOU and is only one example  
28 of a potential future condition with an updated Bay-Delta WQCP.

29 Regardless of whether the Delta Conveyance Project is approved or not, DWR will continue to  
30 operate the SWP in compliance with existing and future Bay-Delta WQCP standards and  
31 requirements.

## 32 **Antidegradation Policy and Analysis**

33 Several comments asserted that an antidegradation policy analysis should be performed for the EIR.  
34 The EIR does not specifically state whether the alternatives are consistent with the state's  
35 Antidegradation Policy because doing so requires determining whether allowing project-caused  
36 water quality degradation, which is less than significant, is in the best interest of the people of the  
37 state. This determination must consider the socioeconomic benefits of the project. Such  
38 considerations are beyond the purpose and scope of the water quality CEQA analysis for this EIR (as  
39 described later in this section). Nevertheless, Chapter 9 provides the information for water quality  
40 degradation and associated beneficial use effects (i.e., impacts) needed by the State Water Board, to  
41 be considered along with other factors that are outside the scope of this EIR chapter, to determine  
42 whether the selected alternative is consistent with state and federal antidegradation policies.

43 In California, maintaining consistency with the federal and state antidegradation policies falls to the  
44 Regional Water Quality Control Boards and the State Water Board in considering point-source

1 discharge and certain water rights permits. The State Water Board has interpreted the state's  
2 Antidegradation Policy to incorporate the federal Antidegradation Policy in situations where the  
3 policy is applicable (SWRCB Order WQ 86-18 17). However, the application of federal  
4 Antidegradation Policy to nonpoint source discharges such as the Delta Conveyance Project is  
5 limited.<sup>1</sup>

6 For the Delta Conveyance Project, application of the Antidegradation Policy will be considered by  
7 the State Water Board with respect to DWR's application to add one or more new points of diversion  
8 to its existing water right permits. The water quality degradation analysis presented in Chapter 9 of  
9 the EIR is but one part of the subsequent application of the policy. The Antidegradation Policy  
10 addresses both the amount of water quality lowering that would occur and the determination of  
11 whether lowered water quality is necessary to accommodate economic or social development in the  
12 area and consistent with maximum benefit to the state.

13 Water development and water conservation projects may be important social and economic  
14 developments that justify a lowering of water quality (Wat. Code § 13000). Similarly, environmental  
15 protection may constitute important social development, justifying a change in water quality, even if  
16 no other social or economic benefits to the community are demonstrated (see William R. Attwater's  
17 Oct. 1987 memorandum on federal Antidegradation Policy to Regional Water Board Executive  
18 Officers [State Water Resources Control Board 1987]). Where there are two conflicting uses, the  
19 quality of water for one use may be reduced where the change improves water quality for the other,  
20 in appropriate circumstances (see 40 CFR § 131.11(a)(1)). This latter analysis is outside the scope of  
21 CEQA and necessarily requires evaluation of economic value and social issues associated with the  
22 existing beneficial uses, in addition to the economic costs and changes in these conditions that may  
23 occur as a result of lowered water quality.

24 Furthermore, such socioeconomic evaluation is stipulated in the federal and state policies to  
25 consider these issues via intergovernmental coordination, public participation, and the state's  
26 planning processes. Evaluating socioeconomic changes is not the purview of the water quality  
27 analysis, which is rightfully focused on providing the numerical and qualitative assessment only of  
28 the potential for implementation of the project alternatives to degrade existing water quality with  
29 respect to regulatory water quality objectives and beneficial uses. The socioeconomic evaluation  
30 must be conducted based on the results of the EIR and the later stages of regulatory agency review  
31 and permitting of changes to the SWP water rights orders, or other regulatory actions.

---

<sup>1</sup> 40 Code of Federal Regulations (CFR) 131.12(a)(2) requires that the "State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control." Chapter 4, *Antidegradation*, of the U.S. Environmental Protection Agency *Water Quality Standards Handbook* (U.S. Environmental Protection Agency 2012) clarifies this as follows: "Section 131.12(a)(2) does not mandate that States establish controls on nonpoint sources. The Act leaves it to the States to determine what, if any, controls on nonpoint sources are needed to provide attainment of State water quality standards (See CWA §319). States may adopt enforceable requirements, or voluntary programs to address nonpoint source pollution. Section 40 CFR 131.12(a)(2) does not require that States adopt or implement best management practices for nonpoint sources prior to allowing point source degradation of a high-quality water. However, States that have adopted nonpoint source controls must assure that such controls are properly implemented before authorization is granted to allow point source degradation of water quality."

## 1 Department of Water Resources Delta Efforts

2 DWR performs a number of different duties and responsibilities within the Delta that are beyond the  
3 scope of the Delta Conveyance Project. This section describes several ongoing efforts by DWR, which  
4 were identified across different comments, that are consistent with DWR's mission: "[t]o sustainably  
5 manage the water resources of California, in cooperation with other agencies, to benefit the state's  
6 people and protect, restore, and enhance the natural and human environments."

## 7 Levee Management

8 Some comments claimed the Draft EIR failed to adequately analyze the project's likely detrimental  
9 effects on Delta levees and flood control infrastructure, while others expressed concern regarding  
10 the state's obligations or commitments to levee maintenance or management throughout the Delta.

11 As described in Chapter 7, *Flood Protection*, in the section titled *State Plan of Flood Control*, the state  
12 and federal governments have developed, managed, and maintained an elaborate flood control  
13 system comprising approximately 1,600 miles of levees. These are part of the state-federal flood  
14 protection system and include levees in the Delta as well as levees that are part of the Sacramento  
15 River Flood Control Project. In addition to this system, numerous nonstate and nonfederal levees are  
16 maintained and managed throughout the Delta. DWR does not own or maintain all levees in the  
17 Delta; and depending on the levee (State Plan of Flood Control vs. non-State Plan of Flood Control)  
18 and the area of protection (urban areas vs. nonurban areas), different standards and guidelines  
19 apply (see the section titled *Levee Standards and Compliance* in Chapter 7). In addition, the Central  
20 Valley Flood Protection Plan, developed by DWR in coordination with the Central Valley Flood  
21 Protection Board, established a systemwide approach to improving flood management in areas  
22 currently receiving protection from State Plan of Flood Control facilities.

23 As described in Chapter 7, in the section titled *Regional Planning Efforts Related to Delta Flood*  
24 *Management*, state funding programs for levee improvements on Delta islands and tracts vary based  
25 on location and type of levee. Since the 1980s, state funds for Delta levees have been made available  
26 through the Delta Levees Maintenance Subventions Program or the Delta Levees Special Flood  
27 Control Projects Program. Using these grant monies, the programs DWR oversees provide funding to  
28 levee maintaining agencies for their use to protect and improve critical levees in many areas of the  
29 Delta. DWR also regularly works with local governments to maintain and improve the levees that  
30 protect the Delta. Additional initiatives undertaken by DWR are the Delta Knowledge Improvement  
31 Project and the Delta Land Use Project, which includes the North Delta Project and the West Delta  
32 Program.

33 These multiple programs and funding opportunities are independent of the Delta Conveyance  
34 Project and would continue as they have, regardless of whether DWR approves the Delta  
35 Conveyance Project or a project alternative. Because the Delta Conveyance Project is dual  
36 conveyance (i.e., able to divert water from either the north or south), existing levees continue to be  
37 an important feature in the Delta under the operation of the project. The federal government (e.g.,  
38 U.S. Army Corps of Engineers) also has existing programs and funding associated with the levees in  
39 the Delta; and as with state and DWR programs, these would continue independent of whether DWR  
40 approves the project or a project alternative.

## 1 Water Quality Monitoring Programs

2 Numerous water quality monitoring stations at locations throughout the Delta are currently in  
3 operation and will continue to be operational in the future. These stations are operated by DWR, the  
4 U.S. Geological Survey, Reclamation, the state's Interagency Ecological Program, and numerous local  
5 agencies. Monitoring locations already present in multiple locations throughout the Delta, such as  
6 Old River near Discovery Bay, would be used during implementation of the project as they are  
7 currently used and will continue to be used to inform the management of water in the Delta. In  
8 addition, DWR anticipates monitoring of mercury and selenium will be further defined in site-  
9 specific monitoring and management plans associated with the habitat restoration areas described  
10 in the CMP, as detailed in Appendix 3F, *Compensatory Mitigation Plan for Special-Status Species and*  
11 *Aquatic Resources*, and EIR chapters (e.g., Chapter 9, Impact WQ-6 and Mitigation Measure WQ-6:  
12 *Develop and Implement a Mercury Management and Monitoring Plan*).

## 13 References Cited

- 14 California Department of Water Resources. 2018. *DWR-Provided Climate Change Data and Guidance*  
15 *for Use During Groundwater Sustainability Plan Development*. July. CA. Available:  
16 [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Resource-Guide-Climate-Change-Guidance_v8_ay_19.pdf)  
17 [Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Resource-Guide-Climate-Change-Guidance_v8_ay_19.pdf)  
18 [Guidance-Documents/Files/Resource-Guide-Climate-Change-Guidance\\_v8\\_ay\\_19.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Resource-Guide-Climate-Change-Guidance_v8_ay_19.pdf). Accessed:  
19 June 7, 2023.
- 20 California Natural Resources Agency, California Department of Water Resources, California Water  
21 Boards, California Environmental Protection Agency, and California Department of Food and  
22 Agriculture. 2022. CA. *California's Water Supply Strategy: Adapting to a Hotter Drier Future*.  
23 Available: [https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-](https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf)  
24 [Resilience/CA-Water-Supply-Strategy.pdf](https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf). Accessed: May 31, 2023.
- 25 California Natural Resources Agency, California Environmental Protection Agency, and California  
26 Department of Food and Agriculture. 2020. *California Water Resilience Portfolio*. Final. CA.  
27 Available: [https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final\\_California-](https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_ay11-opt.pdf)  
28 [Water-Resilience-Portfolio-2020\\_ADA3\\_v2\\_ay11-opt.pdf](https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_ay11-opt.pdf). Accessed: June 2, 2023.
- 29 California Natural Resources Agency, California Environmental Protection Agency, and California  
30 Department of Food and Agriculture. 2021. *California Water Resilience Portfolio Progress Report*.  
31 CA. Available: [https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-](https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-WRP-Progress-Report.pdf)  
32 [Resilience/CA-WRP-Progress-Report.pdf](https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-WRP-Progress-Report.pdf). Accessed: June 1, 2023.
- 33 Delta Conveyance Design and Construction Authority. 2022a. *Volume 1: Delta Conveyance Final Draft*  
34 *Engineering Project Report—Central and Eastern Options*. May 2022. Sacramento, CA.
- 35 Delta Conveyance Design and Construction Authority. 2022b. *Volume 1: Delta Conveyance Final Draft*  
36 *Engineering Project Report—Bethany Reservoir Alternative*. May 2022. Sacramento, CA.
- 37 State Water Resources Control Board. 1987. *Memorandum: Federal Antidegradation Policy*. From  
38 *William R. Attwater, Chief Counsel, to Regional Water Board Executive Officers*. October 7.  
39 Available: [https://www.epa.gov/sites/default/files/2014-12/documents/ca-antidegradation-](https://www.epa.gov/sites/default/files/2014-12/documents/ca-antidegradation-policy-memo.pdf)  
40 [policy-memo.pdf](https://www.epa.gov/sites/default/files/2014-12/documents/ca-antidegradation-policy-memo.pdf). Accessed: June 2, 2023.

- 1 State Water Resources Control Board. 1995. *Water Quality Control Plan for the San Francisco*  
2 *Bay/Sacramento–San Joaquin Delta Estuary*. 95-1WR. May 1995. Available:  
3 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/wq\\_control](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/1995wqcp/docs/1995wqcpb.pdf)  
4 [plans/1995wqcp/docs/1995wqcpb.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/1995wqcp/docs/1995wqcpb.pdf). Accessed: May 31, 2023.
- 5 State Water Resources Control Board. 2010. *Development of Flow Criteria for the Sacramento–San*  
6 *Joaquin Delta Ecosystem. Prepared Pursuant to the Sacramento–San Joaquin Delta Reform Act of*  
7 *2009*. August 3. Sacramento, CA. Available:  
8 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/do](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf)  
9 [cs/final\\_rpt080310.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf). Accessed: May 31, 2023.
- 10 State Water Resources Control Board. 2017. *Scientific Basis Report in Support of New and Modified*  
11 *Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries*  
12 *to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows*. Final. Prepared by State  
13 Water Resources Control Board and California Environmental Protection Agency with assistance  
14 from ICF. Sacramento, CA. Available: [https://cawaterlibrary.net/wp-](https://cawaterlibrary.net/wp-content/uploads/2017/10/201710_bdphaseII_sciencereport.pdf)  
15 [content/uploads/2017/10/201710\\_bdphaseII\\_sciencereport.pdf](https://cawaterlibrary.net/wp-content/uploads/2017/10/201710_bdphaseII_sciencereport.pdf). Accessed: June 7, 2023.
- 16 State Water Resources Control Board. 2018a. *Substitute Environmental Document in Support of*  
17 *Potential Changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento–San*  
18 *Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality*. Final. State  
19 Clearinghouse No. 2012122071. July. Sacramento, CA. Available:  
20 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta pl](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/00_ES.pdf)  
21 [an/water\\_quality\\_control\\_planning/2018\\_sed/docs/00\\_ES.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/00_ES.pdf). Accessed: June 2, 2023.
- 22 State Water Resources Control Board. 2018b. *Water Quality Control Plan for the San Francisco*  
23 *Bay/Sacramento–San Joaquin Delta Estuary*. Sacramento, CA. Available:  
24 [https://www.waterboards.ca.gov/plans\\_policies/docs/2018wqcp.pdf](https://www.waterboards.ca.gov/plans_policies/docs/2018wqcp.pdf). Accessed: June 2, 2023.
- 25 State Water Resources Control Board. 2018c. *July 2018 Framework for the Sacramento/Delta Update*  
26 *to the Bay-Delta Plan*. Available:  
27 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/sed/sa](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf)  
28 [c\\_delta\\_framework\\_070618%20.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf). Accessed: June 2, 2018.
- 29 State Water Resources Control Board. 2022. *Memorandum of Understanding Advancing a Term Sheet*  
30 *for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan,*  
31 *and Other Related Actions*. Update. November. Available:  
32 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/2023/r](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/revise-v-a-mou-swrcb-copy.pdf)  
33 [evise-v-a-mou-swrcb-copy.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/revise-v-a-mou-swrcb-copy.pdf). Accessed: June 2, 2023.
- 34 State Water Resources Control Board. 2023. Chapter 9, Proposed Voluntary Agreements. In *Draft*  
35 *Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water*  
36 *Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the*  
37 *Sacramento River and Its Tributaries, Delta Eastside Tributaries, and Delta*. September.  
38 Sacramento, CA.

- 1 State Water Resources Control Board, California Department of Water Resources, and California  
2 Department of Fish and Wildlife. 2023. *Draft Scientific Basis Report Supplement in Support of*  
3 *Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the*  
4 *San Francisco Bay/Sacramento–San Joaquin Delta Water Quality Control Plan*. January. Available:  
5 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/2023/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/202301-bd-draft-sbrsupp.pdf)  
6 [202301-bd-draft-sbrsupp.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/202301-bd-draft-sbrsupp.pdf). Accessed: June 2, 2023.
- 7 State Water Resources Control Board and California Environmental Protection Agency. 2012.  
8 *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta*  
9 *Salinity Objectives*. Update. December. Available:  
10 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_pl](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/docs/2012ap_c.pdf)  
11 [an/water\\_quality\\_control\\_planning/2012\\_sed/docs/2012ap\\_c.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/docs/2012ap_c.pdf). Accessed: June 1, 2023.
- 12 U.S. Environmental Protection Agency. 2012. *Water Quality Standards Handbook*. Office of Water,  
13 Washington, D.C. EPA-823-B-12-002. Available: [https://www.epa.gov/sites/default/files/2014-](https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter4.pdf)  
14 [10/documents/handbook-chapter4.pdf](https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter4.pdf). Accessed: June 2, 2023.



# Exhibit F



# **ATTACHMENT 3**

1 LISA A. TRAVIS (SBN 184793)  
County Counsel  
2 WILLIAM C. BURKE (SBN 213279)  
Deputy County Counsel  
3 COUNTY OF SACRAMENTO  
700 H Street, Suite 2650  
4 Sacramento, CA 95814  
Telephone: (916) 874-5544  
5 Facsimile: (916)874-8207  
[burkew@saccounty.gov](mailto:burkew@saccounty.gov)

6 SOMACH SIMMONS & DUNN  
A Professional Corporation  
7 KELLEY M. TABER (SBN 184348)  
8 LOUINDA V. LACEY (SBN 275888)  
500 Capitol Mall, Suite 1000  
9 Sacramento, CA 95814  
Telephone: (916) 446-7979  
10 Facsimile: (916) 446-8199  
[ktaber@somachlaw.com](mailto:ktaber@somachlaw.com)  
11 [llacey@somachlaw.com](mailto:llacey@somachlaw.com)

12 Attorneys for Petitioners and Plaintiffs  
County of Sacramento and Sacramento  
13 County Water Agency

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE, § 6103**

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California  
17 county, and SACRAMENTO COUNTY  
WATER AGENCY, a California water district,

18 Petitioners and Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF WATER  
21 RESOURCES, a California state agency,

22 Respondent and Defendant,

23 DOES 1 through 50,

24 Real Parties in Interest,

25 AND RELATED ACTIONS.  
26  
27  
28

**Case No. 24WM000014**

(Related to 24WM000006; 24WM000008;  
24WM000009; 24WM000010; 24WM000011;  
24WM000012; 24WM000017; 24WM000062)

**Assigned to Hon. Stephen P. Acquisto  
Department 36**

CALIFORNIA ENVIRONMENTAL  
QUALITY ACT (CEQA) CASE

**DECLARATION OF LOUINDA V. LACEY  
IN SUPPORT OF COUNTY OF  
SACRAMENTO AND SACRAMENTO  
COUNTY WATER AGENCY'S MOTION  
FOR PRELIMINARY INJUNCTION**

**DATE: May 31, 2024  
TIME: 1:30 p.m.  
DEPT: 36**

Petition Filed: January 22, 2024  
Amended Petition Filed: February 16, 2024

1 I, Louinda V. Lacey, declare:

2 1. I am an attorney at law licensed to practice before the courts of the state of  
3 California. I am of counsel with Somach Simmons & Dunn and counsel of record for Petitioners  
4 and Plaintiffs County of Sacramento and Sacramento County Water Agency (Petitioners). The  
5 following matters are within my personal knowledge and, if called as a witness, I can competently  
6 testify thereto. This declaration is made in support of Petitioners' Motion for Preliminary  
7 Injunction (Motion).

8 2. On May 5, 2024, I downloaded the Notice of Determination issued by the Director  
9 of the California Department of Water Resources (DWR) on December 21, 2023, for the Delta  
10 Conveyance Project (DCP) Final Environmental Impact Report (FEIR), from DWR's website at  
11 <https://cadwr.app.box.com/s/xwscz3s54vbiwfljzohkcg6dl5902gk>. A true and correct copy of this  
12 document is attached to Petitioners' Request for Judicial Notice in support of the Motion filed  
13 concurrently herewith (RJN) as Exhibit A.

14 3. On May 5, 2024, I downloaded DWR's "Decisions" document pertaining to its  
15 Certification of the DCP FEIR, Adoption of Findings and Statement of Overriding  
16 Considerations, Mitigation, Monitoring and Reporting Program and Execution of a Notice of  
17 Determination, which was signed by the Director of DWR on December 21, 2023, from DWR's  
18 website at <https://cadwr.app.box.com/s/g2ibx7wo7hjncdpzu1fcl1i0yqrwcnxi>. A true and correct  
19 copy of the document is attached to the RJN as Exhibit B.

20 4. On May 5, 2024, I downloaded pages 3-1, 3-2, and 3-116 through 3-141 in  
21 Chapter 3 of the DCP FEIR from DWR's website at  
22 <https://cadwr.app.box.com/s/xbs1lry77n07u2cm60a8ledfvc31i3ra>. True and correct copies of the  
23 foregoing pages are attached to the RJN as Exhibit C.

24 5. On May 5, 2024, I downloaded a map book to Chapter 3 of the DCP FEIR, titled  
25 "**Figure: Index Bethany Reservoir Alignment Alternative 5,**" from DWR's website at  
26 <https://cadwr.app.box.com/s/a7dp9bj7xcn3wnjx8exjsds6llrq6ny/file/1369521647499>. A true  
27 and correct copy is attached to the RJN as Exhibit D.

1           6.       On May 5, 2024, I downloaded Common Response 8 “Relationship to Other  
2 Plans, Projects, Policies, and Programs” located in Chapter 3 of Volume 2 of the DCP FEIR from  
3 DWR’s website at <https://cadwr.app.box.com/s/78ox5m81b03cywtjtz3zvw459oaom5n7>. A true  
4 and correct copy is attached to the RJN as Exhibit E.

5           7.       The County of Sacramento filed a Petition for Writ of Mandate and Complaint  
6 challenging DWR’s approval of the DCP and certification of the DCP FEIR in Sacramento  
7 Superior Court Case No. 24WM000014 on January 22, 2024. Petitioners thereafter filed a First  
8 Amended Petition for Writ of Mandate and Complaint (Petition). A true and correct copy of the  
9 Petition, without the attachments thereto, is attached hereto as Exhibit 1.

10          8.       A true and correct copy of Attachment B to the Petition, County of Sacramento’s  
11 comment letter to the DCP draft environmental impact report (DCP DEIR), without the additional  
12 attachments thereto, is attached hereto as Exhibit 2.

13          9.       A true and correct copy of Attachment F to the Petition, Sacramento County Water  
14 Agency’s comment letter to the DCP DEIR, without the additional attachments thereto, is  
15 attached hereto as Exhibit 3.

16          10.       During the Case Management Conference in this case on February 16, 2024, I  
17 raised, on behalf of Petitioners and other clients, concerns regarding rumors that DWR was  
18 planning to undertake geotechnical activities under the DCP FEIR sometime over the summer.  
19 The trial court confirmed that motions for injunctive relief could be filed and heard prior to the  
20 next Case Management Conference on May 31, 2024.

21          11.       On April 3, 2024, I participated in a meeting with DWR’s counsel to discuss the  
22 geotechnical activities that DWR intended to undertake starting on May 1, 2024. Counsel for  
23 other petitioners in some of the related cases also participated in that meeting. Approximately 1.5  
24 hours prior to the meeting, I received a document titled “2024 Preconstruction Field  
25 Investigations – Environmental Compliance, Clearance, and Monitoring Plan” (2024  
26 Preconstruction Plan) from L. Elizabeth Sarine, Deputy Attorney General and counsel for DWR.  
27 A true and correct copy of the 2024 Preconstruction Plan is attached hereto as Exhibit 4.

1           12.     During the foregoing April 3, 2024, meeting, DWR represented that the  
2 geotechnical activities planned for May and June 2024 would be performed under a voluntary  
3 “temporary entry permit” with respective landowners.

4           13.     On April 8, 2024, I prepared a meet and confer letter to L. Elizabeth Sarine,  
5 Deputy Attorney General and counsel for DWR, on behalf of Petitioners and Plaintiffs County of  
6 Sacramento, Sacramento County Water Agency, City of Stockton, and Sacramento Area Sewer  
7 District in this and related actions. My office sent the letter to Ms. Sarine on the same day. A  
8 true and correct copy of the letter is attached hereto as Exhibit 5.

9           14.     On April 12, 2024, I participated in a meet and confer meeting convened by DWR  
10 in response to the foregoing April 8, 2024, letter. I participated in the meeting on behalf of  
11 Petitioners and Plaintiffs County of Sacramento, Sacramento County Water Agency, City of  
12 Stockton, and Sacramento Area Sewer District in this and related actions. Counsel for some of  
13 the other petitioners in the related actions also participated in that meeting.

14           15.     On April 15, 2024, I prepared and sent a letter to L. Elizabeth Sarine, Deputy  
15 Attorney General and counsel for DWR, on behalf of petitioners County of Sacramento and  
16 Sacramento County Water Agency (Case No. 24WM000014), City of Stockton (Case No.  
17 24WM000009), Sacramento Area Sewer District (Case No. 24WM000012), San Francisco  
18 Baykeeper et al. (Case No. 24WM000017), County of Butte (Case No. 24WM000011), South  
19 Delta Water Agency et al. (Case No. 24WM000062), and County of San Joaquin et al. (Case No.  
20 24WM000010) in response to the April 12, 2024 meeting. A true and correct copy of the letter is  
21 attached hereto as Exhibit 6.

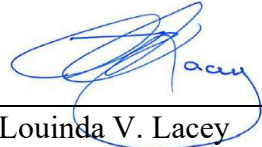
22           16.     On April 22, 2024, I received a letter from L. Elizabeth Sarine, Deputy Attorney  
23 General and counsel for DWR, in response to my letters dated April 8, 2024, and April 15, 2024.  
24 A true and correct copy of the letter is attached hereto as Exhibit 7.

25           17.     DWR is aware that Petitioners and others in some of the related cases will be  
26 seeking a preliminary injunction to enjoin the geotechnical activities. To date, DWR has refused  
27 to postpone the geotechnical activities planned for May and June 2024.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18. On May 6, 2024, I downloaded “Figure ES-1. Sacramento-San Joaquin Delta” on page 5 of the Executive Summary in the DCP FEIR from DWR’s website at <https://cadwr.app.box.com/s/28dykirctpwkny65amoxg7dxr125rl6p>. A true and correct copy is attached to the RJN as Exhibit F.

I declare under penalty of perjury under the laws of the State of California that the facts recited above are true and correct. Executed this 8th day of May 2024 at Roseville, California.

  
\_\_\_\_\_  
Louinda V. Lacey



# **ATTACHMENT 4**

1 LISA A. TRAVIS (SBN 184793)  
County Counsel  
2 WILLIAM C. BURKE (SBN 213279)  
Deputy County Counsel  
3 COUNTY OF SACRAMENTO  
700 H Street, Suite 2650  
4 Sacramento, CA 95814  
Telephone: (916) 874-5544  
5 Facsimile: (916)874-8207  
[burkew@saccounty.gov](mailto:burkew@saccounty.gov)

6 SOMACH SIMMONS & DUNN  
A Professional Corporation  
7 KELLEY M. TABER (SBN 184348)  
8 LOUNDA V. LACEY (SBN 275888)  
500 Capitol Mall, Suite 1000  
9 Sacramento, CA 95814  
Telephone: (916) 446-7979  
10 Facsimile: (916) 446-8199  
[ktaber@somachlaw.com](mailto:ktaber@somachlaw.com)  
11 [llacey@somachlaw.com](mailto:llacey@somachlaw.com)

12 Attorneys for Petitioners and Plaintiffs  
County of Sacramento and Sacramento  
13 County Water Agency

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE, § 6103**

14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California  
county, and SACRAMENTO COUNTY  
17 WATER AGENCY, a California water  
district,

18 Petitioners and Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF WATER  
21 RESOURCES, a California state agency,

22 Respondent and Defendant,

23 DOES 1 through 50,

24 Real Parties in Interest,

25 AND RELATED ACTIONS.  
26  
27  
28

**Case No. 24WM000014**

(Related to 24WM000006; 24WM000008;  
24WM000009; 24WM000010; 24WM000011;  
24WM000012; 24WM000017; 24WM000062)

**Assigned to Hon. Stephen P. Acquisto  
Department 36**

CALIFORNIA ENVIRONMENTAL  
QUALITY ACT (CEQA) CASE

**DECLARATION OF DANTE J.  
NOMELLINI, JR. IN SUPPORT OF  
COUNTY OF SACRAMENTO AND  
SACRAMENTO COUNTY WATER  
AGENCY'S MOTION FOR  
PRELIMINARY INJUNCTION**

**DATE: May 31, 2024**

**TIME: 1:30 p.m.**

**DEPT: 36**

Petition Filed: January 22, 2024

Amended Petition Filed: February 16, 2024

1 I, Dante J. Nomellini, Jr., declare:

2 1. I am an attorney licensed to practice in the State of California (Bar No. 186072)  
3 and an attorney of record for Petitioners South Delta Water Agency et al. in *South Delta Water*  
4 *Agency et al. v. California Department of Water Resources*, Sacramento Superior Court Case No.  
5 24WM000062 and an attorney of record for Petitioners Central Delta Water Agency in *County of*  
6 *San Joaquin et al. v. California Department of Water Resources*, Sacramento Superior Court  
7 Case No. 24WM000010. I make this declaration in support of County of Sacramento and  
8 Sacramento County Water Agency’s Motion for Preliminary Injunction in Sacramento Superior  
9 Court Case No. 24WM000014. I am aware that this declaration will be incorporated by reference  
10 into motions for preliminary injunction filed by other parties in cases related to Sacramento  
11 Superior Court Case No. 24WM000014 as well, and I do not object to such incorporation. I have  
12 personal knowledge of the matters set forth in this declaration, and if called as a witness, I could  
13 and would testify competently to such matters.

14 2. Attached hereto as Exhibit 1 is a true and correct copy of the email and its  
15 attachment that my law office (Nomellini, Grilli & McDaniel Law Office) received on February  
16 13, 2024, at 10:48 a.m., from Eileen Nichols Christin on behalf of Victoria Island LP. The  
17 attachment is a fourteen (14) page letter from the California Department of Water Resources  
18 addressed to Victoria Island LP, dated February 2, 2024, entitled “Subject: Request for  
19 Temporary Entry Permit.”

20 I declare under penalty of perjury under the laws of the State of California that the facts  
21 recited above are true and correct to the best of my personal knowledge. Executed this 3rd day of  
22 May 2024 in Stockton, California.

23  
24  
25  
26  
27  
28  


\_\_\_\_\_  
Dante J. Nomellini, Jr.

# Exhibit 1

**ngmplcs@pacbell.net**

---

**From:** eileen@victoriaisland.net  
**Sent:** Tuesday, February 13, 2024 10:48 AM  
**To:** 'Nomellini, Grilli & McDaniel PLCs'  
**Cc:** jack@victoriaisland.net; jim@victoriaisland.net  
**Subject:** DWR TEP Request  
**Attachments:** 2024\_02\_13\_10\_44\_34.pdf

Good morning Dante,

We received the attached document from DWR last week. How do you recommend that we proceed?

Thank you,  
Eileen

Eileen Nichols Christin  
Victoria Island LP  
209 / 465-5600 Office  
209 / 481-3307 Cell



**DEPARTMENT OF WATER RESOURCES**

P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



February 2<sup>nd</sup>, 2024

VICTORIA ISLAND, LP  
PO BOX 87  
HOLT, CA 95234

**Subject: Request for Temporary Entry Permit**

To whom it may concern:

This letter is being sent to you by the Department of Water Resources (DWR) as our records indicate that you own property within the study area for the Delta Conveyance Project (Project) footprint. DWR is requesting a Temporary Entry Permit (TEP) to conduct various surveys/studies to continue its planning and design efforts prior to implementing and constructing a single tunnel water conveyance system in the Sacramento-San Joaquin River Delta.

Based on Governor Newsom's Executive Order and the recently certified Final Environmental Impact Report for the Project, DWR, with assistance from the Delta Conveyance Design and Construction Authority (DCA), which is a joint powers authority, will continue its planning and design efforts for the Project to modernize the State Water Project's current infrastructure in light of sea level rise and more extreme weather events due to climate change, and protect against earthquake risk.

As DWR, with the support of DCA, continues its planning efforts, it is important that we understand the geological makeup and potential alignment constraints of the Delta. This will aid in determining the best and least invasive approaches for all Delta inhabitants. To that end, we are requesting consideration of our request to perform a limited number of soil explorations and other ancillary surveys/studies on your property. Specific information in the TEP, maps of proposed geotechnical study locations, and geotechnical exploration fact(s) sheet are attached to this letter and will give you a better sense of what this work would entail.

DWR is offering you compensation, in the amount set forth in Paragraph 4 of Attachment 1, to perform the identified activities on your property. This compensation is only available if you voluntarily agree to sign the TEP.

We understand that you may have questions or require additional information on this matter. As such, if you have questions regarding the Project, please contact DWR representative, Kathryn Icelow (E: Kathryn.Icelow@water.ca.gov, T: (916) 699-8387). If you have questions regarding your TEP, please contact your Right of Way Agent Jennifer Mizrahi or Cathy Springford (T: 805-773-1459) to discuss next steps and address any concerns you might have. Please understand that the Parcel Exhibit attached to the TEP specific to your property shows proposed study locations, and that you will have an opportunity to discuss the potential of revising the location (soil exploration site) as you work with your Right of Way Agent.

Thank you for considering the proposed TEP to allow DWR and DCA access to your property to perform these essential studies/surveys. DWR and DCA are committed to working with you and other interested parties throughout the Delta to understand and respond to your concerns and to lead an honest and transparent process as we continue to undertake analysis that is necessary for the further planning and design of this Project. We hope that you will consider our request favorably, and we look forward to hearing from you.

Sincerely,



Allan Davis, Supervising Right of Way Agent

Attachments:

- Attachment 1 Temporary Entry Permit (TEP)
- Attachment 2 Landowner Parcel Exhibit
- Attachment 3 Fact Sheet(s)

# **Attachment 1**

---

**Temporary Entry Permit (TEP)**



Owner:	VICTORIA ISLAND, LP	Project:	Delta Conveyance Design and Planning Studies
Address:	PO BOX 87 HOLT, CA 95234	DWR Parcel No(s):	SCJ-0314
County(s):	San Joaquin	APN(s):	129-190-290-000, 129-190-310-000

### TEMPORARY ENTRY PERMIT

This Temporary Entry Permit ( "Permit") is entered into by and between Victoria Island, LP ("OWNER") and the State of California through its Department of Water Resources ("DWR"), whereby OWNER grants permission to DWR, and its officers, employees, agents and contractors, including, but not limited to, the Delta Conveyance Design and Construction Joint Powers Authority ("DCA"), to enter with all necessary equipment onto OWNER's land located in the County of San Joaquin, State of California, identified as Assessor's Parcel No(s). 129-190-290-000, 129-190-310-000, and as depicted on the attached Landowner Parcel Exhibit ("Property"). This permission is granted for the purpose of conducting the activities described in Exhibit "A" attached hereto and made a part hereof, including field surveys, engineering, utilities, biological, geological, archaeological, cultural studies (including tribal representatives), and for other incidental purposes as may be required.

Compensation for this permission is based on the field activities anticipated by DWR on OWNER's Property subject to the following conditions:

1. DWR will exercise reasonable precautions to avoid damages and to protect persons and Property. Soil exploration locations will be properly marked so that they do not pose a safety hazard for wildlife or people as applicable. DWR's surveys and investigation team members shall read and heed all signs posted as notification of underground pipelines and hazardous conditions or materials on the Property.

DWR agrees not to unreasonably interfere with operations on the Property. DCA will make reasonable efforts to remove temporary survey stakes upon completion of its activities unless prior agreement has been reached with the OWNER. DWR shall limit vehicular and pedestrian access to those routes reasonably identified by OWNER or his/her representative. If access is by dirt roads, every effort will be made by DWR to avoid producing excess dust and to avoid creating excessive rutting by using mud mats or tracked equipment where wet or muddy conditions exist.

DWR acknowledges that the Property may include, without limitation, the use of pesticides, herbicides, fertilizer or other chemical substances (collectively, "Substances"). DWR hereby agrees to accept and assume any and all risks of injury or damage arising from or relating to entry upon or use of the Property including, without

limitation, injury, or damage from exposure to Substances, except for such risks caused by the gross negligence or intentional tortious conduct of OWNER.

Owner shall notify DWR of any potentially hazardous activities on the Property at the planned time for entry including, but not limited to, the use of pesticides, herbicides, fertilizers, or other chemical substances.

2. DWR will only record information of the type indicated within the delineated area(s). DWR will not record or disclose any inadvertently observed information of significance, outside of the delineated area(s), including biological and/or cultural resource survey area(s), and scope of the specified survey activity unless otherwise required by law.

3. OWNER assumes no liability for loss of property, damage to property, or injuries to or deaths of agents, contractors, or employees of DWR due to the exercise of privileges given under this Permit.

4. DWR shall pay the amount of \$1,000, which represents an Acquisition Incentive Payment (AIP), to OWNER upon OWNER's execution of this Permit – provided the OWNER signs the Permit within forty-five (45) days of the date of the DWR's initial written offer to OWNER.

OWNER will receive a payment of \$7,500, which represents the maximum amount of compensation for the probable damages ("Probable Damages") resulting from DWR and/or its contractors' use of the OWNER's Property.

OWNER will receive a maximum total payment of \$8,500, which includes Probable Damages and the AIP, if applicable.

5. Nothing in this Permit precludes OWNER from filing a claim(s) for any loss or expense that OWNER or its tenant may suffer that is caused by DWR or that is due to exercise by DWR of the rights granted by this Permit if the actual damages and interference exceeds the amount paid by DWR pursuant to this Permit.

6. In addition to the payment made pursuant to Paragraph 4 of this Permit, DWR agrees to indemnify and hold OWNER harmless from any physical damage, including physical damage to the crops of OWNER or its tenant, proximately caused by the activities authorized by this Permit. DWR also agrees to either reimburse OWNER for any damage to OWNER's roads, fences, or other personal property occurring due to the exercise of rights granted herein, or to replace or restore said property.

7. DWR's access to the Property may occur between the hours of 7:00am and 7:00pm. Deviation from these work hours may only occur with written permission from the OWNER. DWR staff will require access to the Property for a minimum of one (1) day or up to sixty (60) nonconsecutive days. Prior to accessing OWNER's Property, DWR will give OWNER a minimum of fourteen (14) days verbal notification ("14-day verbal notification") to be followed by ten (10) days written notification ("10-day written

notification"). A seventy-two (72) -hour verbal notification ("72-hour verbal notification") will be given to OWNER prior to entry upon the Property. The 14-day verbal notification will include a description of the activities that will be conducted on the Property and, as much as possible, a description of the area where activities will take place. The 10-day written notification will confirm the 14-day verbal notification and will provide OWNER information pertaining to the purpose of the several types of studies to be conducted on the Property and the point of contact(s) for DWR. Prior to entry by DWR, OWNER may request that DWR shall only come onto the Property with a representative of OWNER and shall be escorted during DWR's entire visit. DWR will make reasonable efforts to cooperate with OWNER's request. OWNER understands that no compensation will be provided for any expenses related to escorting DWR staff on the Property.

8. Following compilation of the data gathered and within one hundred fifty (150) days of OWNER's written request, DWR will provide OWNER with all data, including, but not limited to notes, surveys, reports, and photographs, obtained from any investigation on the Property.

9. This Permit expires on **January 31<sup>st</sup>, 2025**. DWR's access to the Property during that time period will be unlimited but in no instance shall exceed sixty (60) non-consecutive days unless extended pursuant to Paragraph 18.

10. OWNER does not waive any claim or right of legal action.

11. DWR will make its best effort to only drive vehicles and equipment on interior farm roads to avoid natural vegetation and cultivated areas. Revisions to drilling locations must be approved by OWNER and DWR.

12. Reasonable fire safety precautions will be undertaken by DWR during the fire season which includes, but is not limited to, not parking vehicles and equipment over dry areas that are subject to fire hazards.

13. After the notifications referenced in Paragraph 7 above, but before the commencement of Items 1 and 2 of Exhibit A, DWR and its contractors will perform preliminary site clearance assessments to identify sensitive resources such as listed species and habitat and avoid any impacts to these sensitive resources. To protect biological and cultural resources, DWR will follow environmental standards while conducting exploration operations (i.e., creation of test holes).

14. Gates will be left in the same condition as found at the time DWR enters the Property (i.e., locked, dummy locked, open).

15. The Field Activity Coordinator, a member of DWR's Field Coordination Team, will be introduced to the OWNER by a Right of Way Agent. The Field Activity Coordinator will be responsible for contacting and notifying OWNER when any field activities will occur on their Property and act as the liaison for all DWR activities on OWNER Property.

16. The undersigned granting this Permit hereby represents that they are OWNER of the Property or that they are authorized by OWNER to grant this Permit on behalf of OWNER of the Property and no additional approvals or signatures are required.

17. Subject to conditions listed in Civil Code section 1798.24, which governs the disclosure of personal information, DWR shall establish and implement appropriate and reasonable administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

18. This Permit can be extended for two (2) additional six (6) month periods by DWR with written notice to OWNER at least thirty (30) days prior to the expiration date, as identified in Paragraph 9 above, DWR shall pay OWNER the sum of \$500 for each additional six (6) month extension.

19. Cancellation Period. As both parties have negotiated in good faith, either party may cancel the Permit for any or no reason by providing the other party with a written request for cancellation within fourteen (14) days after the Permit has been executed. If OWNER is requesting cancellation, cancellation shall be effective upon DWR's receipt of a cashier's check for the amount paid to OWNER to date. If cancelled by DWR, the amount previously paid to OWNER shall be retained by OWNER.

20. Termination After 14 Days. After fourteen (14) days from execution, OWNER may terminate only for cause. DWR may terminate for any or no reason and any amount paid to the OWNER to date shall be retained by OWNER.

21. DCA Activities. As an agent and contractor of DWR, the DCA may undertake any and all activities permitted under this Permit on DWR's behalf.

OWNER's Name, Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Special Condition(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone No.

\_\_\_\_\_

Recommended for Approval

Name and Phone No. for person for  
notification of entry

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Name* *Date*  
*Right of Way Agent*

Email

\_\_\_\_\_

DWR Representative Approval

OWNER's Signature

\_\_\_\_\_

\_\_\_\_\_  
*Allan Davis* *Date*  
*Supervising Right of Way Agent*

Date

\_\_\_\_\_

### CONSENT OF TENANT(S)

We, the Tenants of the Property described in this Temporary Entry Permit, occupy the subject Property pursuant to a lease with OWNER, and hereby consent to the execution of this Temporary Entry Permit. We also agree that all damages payable will be paid to OWNER as described above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Mailing Address of Tenant if different  
than above)

\_\_\_\_\_  
Phone No.

## EXHIBIT A

For purposes of the Temporary Entry Permit, all survey-related activities will be conducted by qualified and trained Delta Conveyance Design and Construction Authority (DCA) personnel, California Department of Water Resources (DWR) personnel, and/or authorized representatives (contractors/consultants) under the direction of a DCA Project Manager and DWR authority. Property owners will be notified about timing and activities planned prior to all site visits. DWR or DWR's Contractors may conduct the following checked invasive (i.e. ground-disturbing) and non-invasive (i.e. pedestrian or walk-over) activities:

### **Invasive Studies**

#### 1) Soil and Groundwater Exploration

The soil exploration will include: Hollow-stem auger drilling or mud rotary drilling to collect soil samples using a combination of continuous soil coring and soil samplers.

The soil exploration activities can last from a few hours to several weeks (not including weather delays or equipment malfunction) and are described as follows:

- ☒ a) Drilling exploration will generally be performed using up to eight-inch diameter removable hollow-stem augers or up to five-inch diameter mud-rotary drilling techniques. Drilling equipment is usually mounted on a heavy-duty truck, although track-mounted drilling equipment may be utilized as required. The depth of drilling explorations will vary from approximately 15 feet to 200 ± feet. Soil samples will be collected from the soil borings for testing. Additional activities performed within the drill hole may include pressuremeter, PS logging, and/or hydraulic conductivity testing. Cuttings and excess drilling fluid will be contained in drums, large containers, or vacuum trucks, and disposed of offsite at an appropriate landfill. Drums may be stored on site for up to 4 weeks during environmental testing prior to removal and landfill disposal. Vehicles at each site during the exploration may include a drill rig; a water truck; a liftgate truck; a tractor-trailer lowboy truck; and up to 12 additional vehicles for the geotechnical consultant, traffic control, DWR and DCA engineers, geologists, surveyors, scientists, the biological and cultural resource team, and at least two regulatory agencies. The specific drill rig mobilized to the site will be dependent on site-specific access conditions and the purpose and depth of the soil boring. The drill rigs are powered by a 120 to 550 horsepower diesel engine. Track-mounted or rubber tire all-terrain drilling rigs will be used, if needed, to minimize access impacts over soft or uneven ground; these rigs will be hauled to the site by a lowboy tractor-trailer rig. While this complete list of vehicles may be used, not all of them would necessarily be on-site simultaneously. The soil boring activities can take between two (2) and eleven (11) working days to complete. Following completion of each soil exploration, the borehole will be sealed using cement-bentonite grout in accordance with State of California regulations and industry standards.
- ☒ b) Water sampling of an existing well allows DWR to evaluate groundwater quality within the Delta. No drilling or soil sampling will take place. DWR and DCA engineers or geologists will sample the groundwater at an existing well following

approved EPA sampling procedures. Sampling location and procedures to be agreed upon by DWR and OWNER. All groundwater quality measurements will remain confidential, and available to Owner, pursuant to Item 8 in Permit. Vehicles at the site during the sampling may include up to 3 vehicles for the geotechnical consultant and DWR and DCA geologists and scientists.

## **Non-Invasive Studies**

### **✘ 2) Soil Exploration (Geophysical Surveys)**

The non-invasive soil exploration will include Total Field Magnetometer geophysical surveys and are described as follows:

- a) A magnetometer and Global Positioning System (GPS) unit are hand-carried by a technician to measure the ambient magnetic field. The technician walks a line collecting readings. This process is repeated for the next line spaced approximately 10 feet to 15 feet away from the first. The total survey area at a given location is approximately 100 feet by 100 feet. The magnetometer survey will require up to 2 days per site. Typically, up to 5 vehicles will be at each site at any one time during the surveys. These vehicles may include support vehicles for the geotechnical team; DWR and DCA engineers; geophysicists; scientists; the biological and cultural resource team; and at least two regulatory agencies.

### **✘ Site Clearance**

Several days to several weeks prior to all on-land soil explorations, up to 5 support vehicles for DWR and DCA geologists, surveyors, scientists, and the cultural resource team, which may include Tribal representatives, for reconnaissance will visit each site for up to 8 hours. These site inspections are needed to evaluate access to the exploration locations and identify the locations of underground utilities, potential cultural and archaeological resources, and potential biological resources.

- a) Inventory of existing utilities, such as wells, septic systems and fuel tanks, will consist of a review of public records and a walking survey of the proposed affected area as defined in the attached Landowner Exhibit. Records review and walking survey are completed in compliance with best practices as outlined by the California Public Utilities Commission. Site reconnaissance consists of ground surveys with minimal ground disturbance which may require shallow scraping of surface soils, one to three inches deep, in small localized areas at the proposed affected area. Regardless of the surveys to be conducted, DCA will restore the Property, as near as possible, to its original condition.
- b) Inventory of cultural resources will consist of a review of records and a walking survey (may include tribal representatives) of the proposed affected area as defined in the attached Landowner Exhibit. The California Historical Resources Information System will be reviewed to determine if any known cultural resources are present at the affected area. Consultation with California Native American Tribes may occur as well. Archaeological surveys involve walking the exploration location and recording any archaeological resources that are observed on the ground surface. Surveyors may remove minimal vegetation if the ground surface is not visible. Photographs, and GPS location readings will be taken to record archaeological resources.

- c) Biological resources site investigations primarily consist of observations made by environmental specialists within the proposed affected area as defined in the attached Landowner Exhibit. The general purposes of the biological site investigations are to:
- a. Characterize and map biological communities at the affected area;
  - b. Determine whether suitable habitat is present for special-status plant and wildlife species that have the potential to occur in the vicinity of the affected area;
  - c. Conduct general surveys for special-status plant and wildlife species at the affected area; and
  - d. Identify potential waters of the United States and waters of the State (including wetlands) at the affected area. Wetland activities may include digging a small shallow test pit to determine soil composition.

### ✘ 3) Cultural Resources Surveys

Inventory of cultural resources will consist of a review of records and a walking survey (may include tribal representatives). The California Historical Resources Information System will be reviewed to determine if any known cultural resources are present at the affected area. Consultation with California Native American Tribes may occur as well. Archaeological and Tribal surveys involve walking the location of interest and recording any archaeological resources that are observed on the ground surface, the duration of the survey would be dependent on the size of the area being surveyed. If the ground surface is not visible, surveyors may scrape minimal vegetation (up to 1 square foot in size) with a small shovel or hand trowel. Photographs, and GPS location readings will be taken to record cultural and archaeological resources, taking care not to take pictures through windows into the inside of structures. Survey teams will consist of approximately 2 people and 2 vehicles.

### ✘ 4) Geodetic Mapping

Geodetic mapping involves measuring parcel boundaries within the project area using the exact position of geographical points as a reference. The geodetic mapping activities will require the installation of targets on the Property and then using a small aircraft to take photographs while flying over the Property. All flights will occur during daylight hours and two (2) flights will be required. Those flights will be spaced several weeks apart. Mapping will require from one (1) to three (3) site visits. Site visits may last up to eight (8) hours in duration and will require two (2) persons on the first and any subsequent site visits.

In addition to the small aircraft, equipment used to complete the mapping activity will include standard survey trucks and, if the Property is muddy, all-terrain vehicles for property access. A tripod, a hand-held receiver, antenna and data collector unit will also be used. The targets will set by using a sledgehammer to drive iron pipe flush with the ground surface. The iron pipes will be placed at the center of an aerial ground target. GPS surveying equipment will then be used to determine the exact location of the target. If livestock is present, chicken wire (or a similar type of fence fabric) will be installed around the target marker by using a hand-held staple gun and hammer. Staff will return with GPS equipment to resurvey, check, clean, and repair



the target when necessary. After the second aerial flight has been completed, staff will return to remove target material from the ground surface. Property owners may elect to retain the iron pipes installed on the Property for future use.

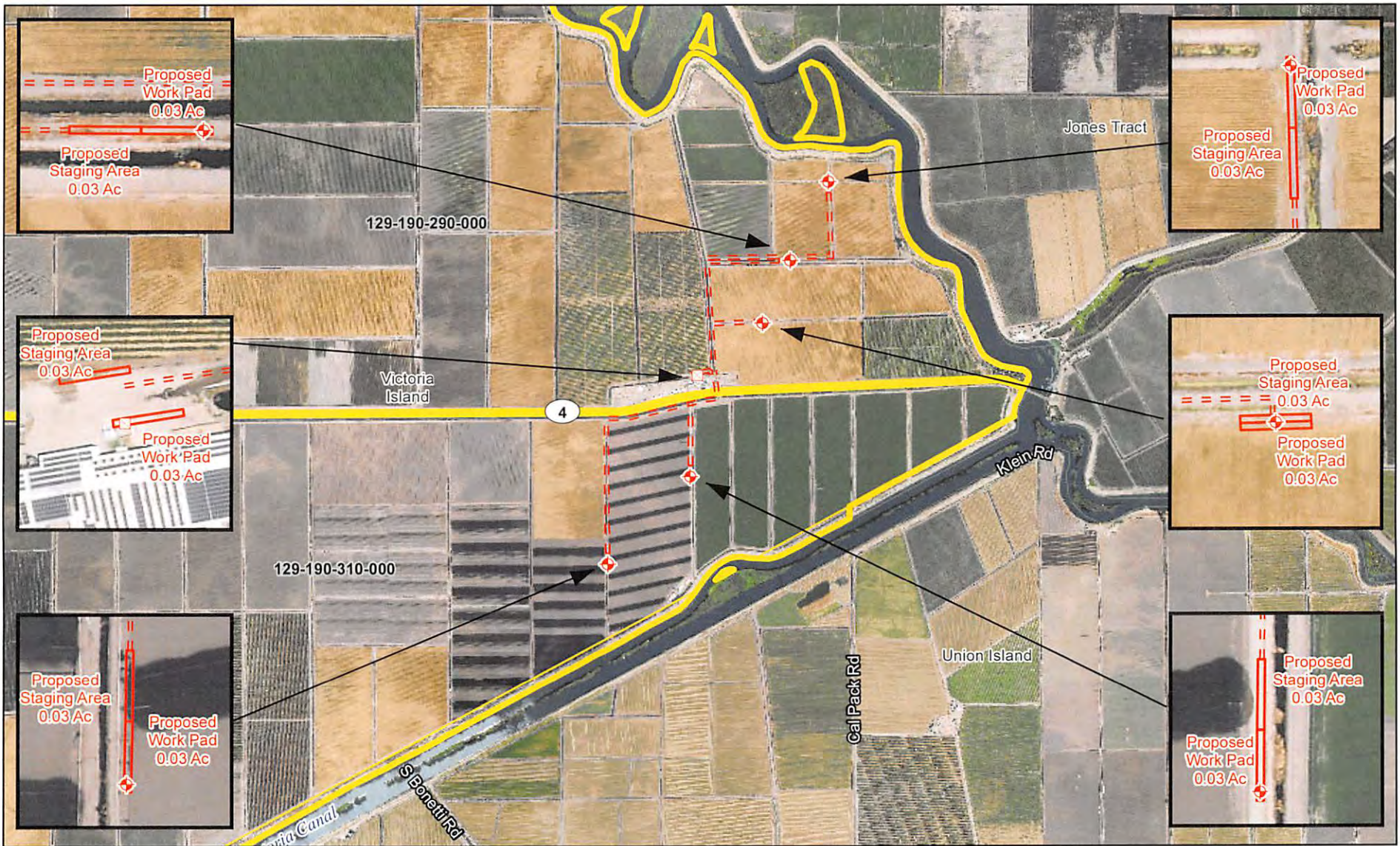
Surveying activities will use two (2) by two (2) inch wood lath-stakes with flagging attached to the stakes and they will be placed in the ground following a lineal progression that may traverse the Property. Survey crews consisting of three (3) to five (5) individuals will be on site during daylight hours. Site visits may occur on non-consecutive days and may take from six (6) to sixteen (16) hours to complete. Survey crews will use vehicles and hand-held field surveying equipment to complete field surveys.

# **Attachment 2**

---

**Landowner Exhibit**

T:\WG1-38\GIS\_33\_00\GISRequest\_11\FDeliverable\_10\FIGEO096\_19\SJC-0314.mxd 2024130



◆ Boring  
   Well Use  
 = = Proposed Existing Access Route  
   Proposed Work Pad  
   Delta Conveyance Parcel  
   Assessor Parcel Boundary



This exhibit does not represent a Survey and is for informational purposes only  
 \*Potential access route subject to Land Owner input and approval  
 Imagery Source: DWR - Hexagon\_Zone10\_2020



# DELTA CONVEYANCE PARCEL EXHIBIT

## San Joaquin County SJC-0314

