



Delta Protection Commission
2101 Stone Blvd. Suite 200
West Sacramento CA 95691

January 2, 2026

Chair Julie Lee and Councilmembers
Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814

**RE: Delta Protection Commission Written Submission as appellant, C20257-A1, and
Comments on Appeals C20257-A2-A10 pursuant to Council Regulations, Section 5028**

Dear Chair Lee and Councilmembers,

The Delta Protection Commission (Commission), in its role representing Delta communities and advising the Delta Stewardship Council (Council) on protecting and enhancing unique Delta values, provides the following additional written submission as an appellant in C20257-A1, and comments on appeals C20257-A2 to A-9 filed in response to the Delta Conveyance Project (DCP, or proposed project) certification of Delta Plan consistency (Consistency Certification).

I. Comments on Appeals Pursuant to Council Appeal Regulations, Section 5028

The Council's appeal regulations (23 Cal.Code Regs. (CCR), § 5028) invite the Commission to submit comments on issues raised by appellants. This invitation extends beyond explaining whether a certification of consistency is supported by substantial evidence. Section 5028 provides that the "Commission may submit written comments on issues raised by an appellant in an appeal *and* whether the certification of consistency for the proposed covered action is supported by substantial evidence in the record..." (§ 5028 (a)(1) [emphasis added].) In this context, the Council shall consider the Commission's comments "as those of an expert in matters that may affect the unique cultural, recreational, and agricultural values of the Delta when preparing, considering, and adopting its findings." (§ 5028(b).)

The Commission agrees with the other appellants that the DCP is inconsistent with multiple Delta Plan policies and recommendations, especially those regarding "Delta as Place." If carried out as proposed, the DCP will irrevocably alter the rural character of the

Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant inconsistency with the Delta Plan's policies and recommendations. It will also result in adverse impacts on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place (Water Code, § 85054). The DCP purports to achieve water supply reliability, but at the expense of the Delta, as all appellants have demonstrated. By failing to adhere to the mandates of the Delta Plan and the Delta Reform Act, including PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, the DCP undermines and is inherently inconsistent with the Delta Plan and the Delta Reform Act. The certification of consistency should, therefore, be remanded.

Each of the nine other appellants represents a specific constituency in the Delta and each of their appeals demonstrates that the Consistency Certification is not supported by substantial evidence for specific policies. The Commission supports their assertions and would like to further emphasize comments made by appeal C20257-A3 related to Delta Plan Policy G P1(b)(3) (best available science) and DWR's failure to adequately consider impacts to water quality. As pages 21-23 of appeal C20257-A3 demonstrate, DWR has not considered the DCP's impacts on DWR's contract with the North Delta Water Agency (NDWA; Contract for the Assurance of a Dependable Water Supply of Suitable Quality or "1981 Contract"). This is alarming and does not support four of the six tenets of best available science: inclusiveness, objectivity, transparency and openness, and timeliness.

As noted in appeal C20257-A3:

"The express purpose of the 1981 Contract is 'to assure that the State will maintain within the Agency a dependable water supply of adequate quantity and quality for agricultural uses and, consistent with the water quality standards [specified in the 1981 Contract], for municipal and industrial uses, that the State will recognize the right to the use of water for agricultural, municipal, and industrial uses within the Agency, and that the Agency will pay compensation for any reimbursable benefits allocated to water users within the Agency ...'"

"The 1981 Contract also contains provisions that expressly protect NDWA and its landowners from harm caused by changes in SWP water conveyance infrastructure.

"As with groundwater quality, DWR acknowledges that use of the DCP facilities will increase salinity in surface water at various locations in the Delta, including within NDWA, on a long-term monthly average basis."

Testimony provided at the point of diversion hearings and included in the DCP record submitted by DWR document that water quality standards have been exceeded in six different years: 2004, 2014, 2015, 2018, 2021, and 2022. The total number of days that water quality exceeded the 1981 Contract criteria (during those years) has been 212 with most of those exceedances occurring in October, which is outside of the 1995 Bay-Delta Plan D-1641 standards season. The 1981 Contract operates year-round; given the above violations, the D-1641 standard is insufficient for ensuring water quality standards year-

round.¹

DWR claims consistency with Delta Plan Policy G P1 (b)(3) because the DCP and EIR “relied on a wide range of relevant data, literature, and tools” and for water quality it specifically references CalSIM and DSM2 and that these models have been peer reviewed.² However, DWR’s failure to account for this information on exceedances of the 1981 Contract criteria demonstrates that its evidence of use of best available science for water quality is insufficiently inclusive of relevant facts in its possession. This failure to address key relevant evidence renders the evidence of consistency with G P1 (b)(3) on water quality not substantial and demonstrates inconsistency with the use of best available science to ensure water quality for in-Delta water users.

II. Written Submission Pursuant to Role as an Appellant (C20257-A1)

A. Delta Plan Policy: DP P2 (23 Cal. Code Regs. (CCR), § 5011), requiring that water management facilities be sited to avoid or reduce conflicts with existing land uses or those described in general plans.

Policy DP P2, along with other policies and recommendations, reflects the intent and meaning of the Delta as an Evolving Place, as expressed in the Delta Plan:

“We want a Delta landscape that remains essentially itself while adapting gradually and gracefully to a future marked by climate change and sea level rise. ...”³

In the Consistency Certification, DWR determines that the DCP is consistent with DP P2 because, even though DWR claims it is infeasible to fully avoid conflicts with existing Delta land uses, it claims it has adopted design changes and mitigation measures to reduce conflicts.⁴ DP P2 Attachment 1 rationalizes consistency with DP P2 by pointing to siting constraints and mitigation efforts, and provides Table 8 where it repeatedly parrots that conflicts have been avoided or reduced.⁵ Despite pages of narrative and references, however, neither DP P2 Attachment 1 nor the record as a whole provide substantial evidence to support consistency with DP P2. The following examples demonstrate the lack of substantial evidence to support consistency with DP P2, and the inherent lack of DCP consistency with the Delta Reform Act’s directive that the coequal goals must be achieved “in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place.” (PRC § 29702(a); Water Code, § 85054.)

¹ Record No. DCP.V2.23.00012, p. 34; Record No. DCP.V2.23.00035; p. 2; Record No. DCP.V2.23.00012, p. 36

² Record No. DCP.AA1.2.00001, p. 171; DCP.AA1.1.00021, pp. 4-21 to 4-24

³ Record No. DCP.D3.1.02122, p. ES-14, emphasis added

⁴ Record No. DCP.AA1.2.00001, p. 164

⁵ Record No. DCP.AA1.2.00018, § 3, § 5, Table 8

1. Substantial evidence does not support DCP consistency with DP P2 and the DCP does not protect the Delta as an evolving place in light of the project's massive scale.

DWR's evidence of consistency with DP P2 is not substantial evidence because it "misses the forest for the trees." The lists of references and Table 8 in DP P2 Attachment 1 do not acknowledge or grapple with the plain fact of DCP's massive scale in relation to small Delta communities and Delta cultural and recreational resources.⁶ Intakes B and C will completely dwarf Hood by installing industrial facilities on either side of this rural Delta community that will be roughly 4-5 times its size during construction, and roughly 2-3 times its size in its permanent condition.⁷ The disruption of 13 years of construction on nearby residences, business, and cultural and recreation facilities poses an obvious, existential threat to the survival of these small Delta communities by jeopardizing their long-term economic and social sustainability.⁸ In the Commission's expert opinion, the sweeping adverse effects of DCP on Delta communities and resources damage rather than protect and enhance the Delta as an evolving place.

2. Substantial evidence does not support DCP consistency with DP P2 because it fails to consider siting to reduce land use conflicts and fails to disclose how much its design and mitigation will reduce conflicts of siting the project as proposed.

The Consistency Certification for DP P2 is also unsupported by substantial evidence because it is premised on the faulty and inherently limiting assumption that avoiding conflicts with Delta land uses is not possible in the siting of the DCP:

"While it is infeasible to site the project to fully avoid conflicts with existing Delta land uses, DWR adopted design changes, environmental commitments, and mitigation measures to reduce direct and indirect conflicts with these uses, including conflicts from project operations."⁹

Because DWR begins not only its consistency determination but the entire project with this

⁶ See, for example, Commission Appeal Maps 1-5, submitted with the Commission's Request for Official Notice pursuant to section 5032(c)(3)(A) and (B), Evidence Code sections 452(h)

⁷ Record No. DCP.D1.1.00026, Mapbook 3-3, Sheets 2 and 3 of 20. See also Commission Appeal Map 2, submitted with the Commission's Request for Official Notice pursuant to section 5032

⁸ See Commission Appeal Maps 2-7; DCP by Year: Few Breaks in Construction over 13 Years at Most Locations, submitted with Request for Official Notice (§ 5032(c)(3)(A) and (B), Evid. Code sections 452(h))

⁹ Final Draft DCP Certification of Consistency with the Delta Plan, DWR, p.164.
[DCP.AA1.2.00001]

assumption, it never analyzes or specifies to what extent DP P2 can be complied with via *siting* that would *reduce*, if not fully avoid, land use conflicts. This failure to address siting that reduces land use conflicts renders the determination of consistency with DP P2 unsupported by substantial evidence.

Moreover, the project design, environment commitments, and then mitigation that DWR does address in the Consistency Certification lack any depiction of *how much* or how effective these various efforts will be to actually reduce land use conflicts that arise from siting the DCP as proposed, as if any amount of post-siting reduction in land use conflict suffices to comply with DP P2. This is insufficient to show consistency with DP P2 is supported by substantial evidence because DP P2 does not exist in isolation, and individual policies of the Delta Plan cannot be considered outside the context of, or separate from, the overall intent of the Delta Plan to achieve the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. (PRC § 29702(a); Water Code, § 85054.) To justify its fundamental assumption that conflicts cannot be fully avoided, DWR selectively quotes the Chapter 5 Delta Plan statement that “Protecting the Delta as an evolving place means accepting that change will not stop, but ...It does not mean that the Delta should be a fortress, a preserve, or a museum.”¹⁰ The Commission is not advocating the Delta as a fortress, preserve, or museum, but for consistency with DP P2 and protecting the Delta as an evolving place that “remains essentially itself.”

This is not what the DCP will produce, nor does the DCP in any way ensure that “the fundamental characteristics and values that contribute to the Delta’s special qualities and that distinguishes it from other places can be preserved and enhanced while accommodating these changes.”¹¹ The DCP will produce a decade and a half of construction disruption, clogged roads with confusing detours, concrete batch plants producing millions of cubic yards of cement, hundreds of acres of dirt piled as high as a tour bus, disrupted waterways, and shuttered stores, restaurants, and marinas.¹² This is not gradual and graceful adaptation. And after the dust settles, the DCP, as proposed, will dominate the Delta landscape by locating the most essential and massive features of the design in the midst of quintessential Delta towns and agricultural tracts. The siting and design of these features conflicts with the existing land uses that constitute Delta as Place. These features have not been sited to avoid or reduce conflict with existing land uses and Consistency Certification does not contain substantial evidence to establish otherwise. Impacts this profoundly inconsistent with Delta as Place values simply cannot be effectively reduced with mitigation. **In short, this is radical change, not evolving change.**

¹⁰ Delta Stewardship Council 2013c:167; Certification, p. 197 [DCP.AA1.2.00001]

¹¹ Delta Stewardship Council 2013c:167; Certification, p. 197 [DCP.AA1.2.00001]

¹² See Commission Appeal Maps 6-7; see also, DCP by Year: Few Breaks in Construction over 13 Years at Most Locations, submitted with Commission’s Request for Official Notice pursuant to section 5032.

3. DWR's Determination of Consistency with G P1 (b)(1) (Coequal Goals) is not supported by substantial evidence and does not support DP P2 Consistency.

The Consistency Certification for G P1 (b)(1) is not only not supported by substantial evidence itself, it does not supply substantial evidence support for DP P2 consistency either. DWR points to the alleged ways it is promoting other non-regulatory Delta Plan recommendations to support consistency with G P1 (b)(1). While these efforts may be desirable, they do not substitute for compliance with DP P2's requirement to site the Project to avoid or reduce conflicts with existing or future land uses in the Delta.¹³ DWR claims that the project advances the co-equal goals through promotion of conveyance-related Delta Plan recommendations, namely WR R12a and WR R12b.^{14 15} However, DWR ignores other Delta Plan recommendations, such as DP R8, Promote Value-added Crop Processing; DP R9 Encourage Agritourism; DP R11, Provide New and Protect Existing Recreation Opportunities; or DP R17, Enhance Opportunities for Visitor-Serving Businesses.¹⁶ These recommendations relate more closely to the point of DP P2 to reduce conflicts with existing land uses. By failing to examine the ways in which it could also advance these other recommendations benefiting the Delta economy and communities, DWR underscores the lack of substantial evidence supporting consistency with DP P2.

Furthermore, the DCP undermines the coequal goals framework by failing to protect "Delta as Place" while prioritizing water supply reliability. The Delta Reform Act and the Delta Plan require that the coequal goals of water supply reliability and ecosystem protection be achieved in a manner that protects and enhances the Delta's unique agricultural, cultural, recreational, and natural resource values as an evolving place. While the DCP advances the water supply reliability goal, its design, impacts characterization, and mitigation framework do not give equivalent consideration or protection of Delta as Place values.¹⁷

As described in Section II.B.1 below, significant and unavoidable impacts to Delta agricultural resources would remain even with mitigation, indicating that the Project does not balance the coequal goals in a manner consistent with Delta Plan requirements.¹⁸ The same is true for cultural resources, as described further in Section II.B.2. Furthermore, the Final EIR and G P1(b)(2) Mitigation Crosswalk demonstrate a clear imbalance in how these objectives are addressed. The Project includes extensive design detail, performance

¹³ DCP.AA1.2.00001, Certification, pp. 189-199

¹⁴ Certification, p 189, line 38 [DCP.AA1.2.00001]

¹⁵ [DCP.AA1.2.00001]; Cal. Code Regs., tit. 23, § 5011 [DP P2]

¹⁶ Delta Stewardship Council 2013c:ES-29

¹⁷ DCP FINAL EIR Ch 15, pp. 15-42 to 15-48 [DCP.D1.1.00133]; DCP FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]; G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

¹⁸ DCP FINAL EIR Ch 15, Tables 15-10 and 15-11 [DCP.D1.1.00133]; DCP Certification of Consistency with the Delta Plan, G P1(b)(2) findings, pp. 167 to 168 [DCP.AA1.2.00001]

standards, and implementation commitments for water-supply infrastructure, while protection of Delta agricultural landscapes is addressed largely through generalized descriptions, unquantified easement concepts, deferred planning, and non-binding stewardship strategies.¹⁹ The record does not contain comparable analysis, standards, or enforceable measures demonstrating that Delta as Place values are protected or enhanced to an equivalent degree.²⁰ This imbalance is compounded by the Project's inconsistency with Delta Plan Policy G P1(b)(2) for agricultural land mitigation. As documented in Chapter 15 and Appendix 15B, the Project would result in significant and unavoidable long-term conversion and fragmentation of Delta farmland without demonstrating sufficient mitigation to preserve agricultural land at the scale required by the Delta Plan.²¹ These unresolved agricultural impacts directly undermine Delta as Place values and, by extension, the coequal goals framework itself. By failing to adhere to statutory mandates in Public Resources Code section 29702(a) and Water Code section 85054 to "protect and enhance" the Delta's agricultural and cultural values, the Project would irrevocably alter the Delta's rural character and economic foundation.²² As a result, the administrative record lacks substantial evidence demonstrating that the DCP achieves the coequal goals in the manner required by the Delta Plan, and the Consistency Certification for G P1 (b)(1) therefore does not support consistency with DP P2.

4. The Consistency Certification's failure to adequately consider feasible project alternatives that would avoid or reduce land use conflicts demonstrates a lack of substantial evidence to support DP P2 consistency.

A further reason that the Consistency Certification for DP P2 is not supported by substantial evidence is that DWR failed to seriously consider feasible alternatives to the project including a Western Delta location ("Western Delta Intake Concept")²³; and the "Resilient Water Portfolio" (Portfolio) approach advocated by the Delta Counties Coalition for many years. The Portfolio approach consists of system-wide levee improvements; maintenance and upgrades to existing water delivery systems and infrastructure; groundwater and surface storage; maximizing regional self-sufficiency and reducing reliance on Delta supplies; all while providing water supplies as proposed by the Project

¹⁹ DCP FINAL EIR Ch 15, pp. 15-39 to 15-48 [DCP.D1.1.00133]; DCP FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]; G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26) [DCP.AA1.1.00020]

²⁰ DCP Certification of Consistency with the Delta Plan, G P1(b)(2) findings, 167 to 168 [DCP.AA1.2.00001]

²¹ DCP FINAL EIR Ch 15, pp. 15-42 to 15-48 [DCP.D1.1.00133], App 15B, pp. 15B-8 to 15B-12 [DCP.D1.1.00135]

²² DCP Certification of Consistency with the Delta Plan, pp. 189 to 199 [DCP.AA1.2.00001]

²³ FINAL EIR App 3A, Identification of Water Conveyance Alternatives, p. 3A-17 [DCP.D1.1.00011]

and being mindful of protecting Delta ecosystem.²⁴ The Portfolio approach would achieve the goals of reliable water supply while avoiding and substantially reducing land use conflicts as required by DP P2.

DWR's consideration of alternatives is not consistent with DP P2 because DWR did not include the consideration of conflicts with existing land uses as a screening criterion in reviewing alternatives. Rather than relying on strict and narrow CEQA criteria, DP P2 and other Delta Plan policies and recommendations should have been included as criteria in the evaluation of alternatives. The Commission's comments on the Draft EIR raised concerns about lack of consideration of alternatives and protection of Delta as Place values.²⁵ DWR developed the project objectives so narrowly that only a narrow range of potential alternatives could meet the objectives, which created false obstacles to the consideration of viable alternatives.²⁶ Repeatedly in explaining the basis for rejecting alternatives, the Final EIR refers back to these narrow objectives. For example: "The fundamental purpose of the covered action necessitates that it entails siting of new intakes within a Delta channel."²⁷ Yet as described, there are feasible alternatives that DWR simply framed out of consideration. This is particularly concerning as DP P2 requires that this sort of infrastructure be sited to avoid or reduce conflicts with existing land uses, to the extent feasible, in coordination with the input of local communities and the Commission. Local jurisdictions and the Commission have been advocating for other alternatives and have expressed concerns with the proposed siting of the DCP. Yet, this input was not reflected in the establishment of the objectives for the Project nor in the review of the alternatives, except to the extent of being rejected on expedient and self-fulfilling grounds.²⁸ This failure to integrate DP P2 into alternatives screening further demonstrates that substantial evidence does not support consistency with DP P2.

Alternatives that would not require diversion in the locations DWR insists on could avoid the conflicts created by the intakes. For example, as pointed out by Appellant C20257 A-9,²⁹ other feasible alternatives exist that DWR did not fully and fairly evaluate in the interest of DP P2 but rather maintained a narrow CEQA interpretation to define alternatives:

²⁴ Found at <https://savethedelta.sacounty.gov/Pages/FreshStart-CaliforniasWater.aspx> accessed December 19, 2025

²⁵ FINAL EIR Vol 2, Ch 2, Table 4-2 comments 409-5, 409-7; Common Response (CR) 3, p. 3-3, Line 12 [DCP.D1.1.00241, DCP.D1.1.00224]

²⁶ Ibid

²⁷ DCP Final Consistency, DP P2 Att 1, Table 7 [DCP.AA1.2.00018]; FINAL EIR Ch 3, pp3-3 – 3-6 [DCP.D1.1.00010]

²⁸ FINAL EIR Vol 2, Ch 2, Table 4-2, 409-5, 409-7; CR 3, p. 3-3, Line 12 [DCP.D1.1.00241, DCP.D1.1.00224]

²⁹ Appellants San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta (DP P2, p. 8)

“A conveyance facility that originates on Sherman Island in the Western Delta would reduce a host of conflicts with local land uses. First, because DWR owns Sherman Island, impacts on existing land uses and private landowners would be substantially reduced. Second, a shorter tunnel would be less costly and less disruptive in terms of construction due to the reduced construction footprint.”³⁰

Although DWR acknowledges that this alternative would reduce land use conflicts as required by DP P2, it rejects this alternative for other reasons without explaining how that decision conforms with DP P2. As a result, DWR’s certification of consistency with DP P2 is not supported by substantial evidence.

The DCP, in terms of seismic risk, exaggerates the need for and benefits to be gained by isolated conveyance. For example, the Delta Independent Science Board (Delta ISB) in comments on both the Draft and Final EIR expressed concern that the characterization of risk overestimates and distorts the project benefits.

"The Delta ISB remains concerned that the EIR discussion of the seismic hazard in the Delta is misleading, as explained in our original comments. The potential overestimation of seismic risk may distort the project’s potential benefits. The primary issue is the EIR’s references to the U.S. Geological Survey reports of the 30-year probability of a magnitude 6.7 or greater earthquake in the San Francisco Bay Area. This probability applies to the greater Bay Area and not to the Delta, which the EIR implies.”³¹

Given the conclusions of the Delta ISB and the fact that the EIR has relied on data that applies to the Bay Area as a whole, not the Delta, there is a lack of substantial evidence to support DWR’s conclusions that the DCP is the preferred alternative because of seismic risk. Seismic risk is one of the main reasons DWR has focused on the tunnel alternative to the exclusion of others such as through-Delta conveyance (e.g., the Portfolio approach), emphasizing potential levee failures from earthquakes and subsequent water quality impacts that threaten to reduce exports.³² However, this conclusion is not supported by substantial by substantial evidence and these other alternatives, which would represent less land use conflicts, should have been considered to be consistent with DP P2.

In addition, the seismic risk remains even if the tunnel is constructed, because the project will not systematically reinforce all Delta levees, but includes construction or reinforcement only of levees where the tunnel infrastructure might be at risk, such as at the

³⁰ FINAL EIR App 3A, pp. 3A-17 to 3A-18 [DCP.D1.1.00011.pdf, description of this alternative originates at Sherman Island and ends at Clifton Court Forebay]

³¹ Delta ISB Comments on the FINAL EIR for the Delta Conveyance Project [DCP.D1.1.00242]

³² FINAL EIR App 3A, pp. 3A-31 to 3A-32 [DCP.D1.1.00011.pdf]; LAND-1, para 2-3 [DCP.V2.22.00001]

intakes, Twin Cities Complex, Bouldin Island and Roberts Island.³³ Appellant C20257-A-9 correctly asserts, "... continued reliance on the existing through-Delta pathway is feasible and that levee armoring and improvement sufficient to withstand flooding, sea level rise, and seismic risks are feasible...In addition, given the foreseeable need to continue relying on existing through-Delta conveyance, maintaining and improving existing levees will be essential, with or without the Delta Tunnel."³⁴

Appellant C20257-A-9 further asserts, "Because evidence in the record demonstrates the viability of less-impactful alternatives that would reduce land use impacts via different siting, and DWR failed to sufficiently analyze those alternatives, DWR lacks substantial evidence supporting its conclusion that the Delta Tunnel is consistent with DP P2."³⁵

5. DWR's Consistency Certification is not supported by substantial evidence because it minimizes the existing land uses protected by DP P2, including housing, recreation, community integrity and cultural values.

DWR's analysis of land use conflicts resulting from the North Delta Intakes, claims that substantial evidence in the record demonstrates that the intakes "will have minimal conflicts with housing when factoring in the measures to reduce conflicts described here. The Intake B and C sites are considered to have the least potential landside impacts because the fewest residential structures would be affected." In fact, DWR states, in its Measures to Reduce Conflicts: "The construction of the intakes is estimated to conflict with a total of five residential structures. Where applicable, DWR would provide compensation to property owners for losses due to the covered action to offset economic effects."³⁶

This analysis discounts consideration of DP P2 and Delta as Place values and further demonstrates a lack of substantial evidence to support consistency. First, it disregards the nature of a rural landscape, where sparse population and scattered homes are the norm and are as significant in this setting as a more urban densely crowded landscape. Furthermore, the dismissal of the conflict as merely an exercise in compensation to landowners neither respects the loss of sense of place, community, and home, nor considers the potential displacement of renters.

The Delta ISB focused on this failure in its review of the Draft EIR.³⁷ DWR does not address the extent of these impacts within the Delta or the fact that these losses are not replaceable within the Delta. This failure to address land use conflicts in the context of the

³³ FINAL EIR Ch 3, p.3-13 [DCP.D1.1.00010]

³⁴ FINAL EIR App 3A, p. 3A-34 [DCP.D1.1.00011.pdf]; LAND-1, ¶ 7 [DCP.V2.22.00001]

³⁵ FINAL EIR App 3A, p. 3A-34 [DCP.D1.1.00011.pdf]; LAND-1, ¶ 7 [DCP.V2.22.00001]

³⁶ FINAL EIR Vol 1, Ch 14, p. 14-23 [DCP.D1.1.00126]

³⁷ Delta ISB. Review of the Draft Environmental Impact Report for the Delta Conveyance Project. Comment 534-33, p. 284-285 [DCP.D1.1.00242]

Delta's rural environment further demonstrates that the Consistency Certification for DP P2 is not supported by substantial evidence.

The record identifies several feasible actions that could have better protected Delta as Place values while pursuing water supply reliability, but which were not adopted. The Delta Plan emphasizes protecting agriculture, recreation, and rural landscapes as an interconnected system, yet DWR did not require mitigation to be geographically targeted to the Delta communities and subregions most affected by the Project, nor did it evaluate landscape-scale effects on agricultural continuity, rural character, or cumulative pressure for nonagricultural uses.³⁸ Appendix 15B describes Agricultural and Land Stewardship (ALS) Strategies intended to support Delta agriculture and land stewardship, but these strategies were retained as voluntary, non-binding concepts rather than enforceable requirements tied to protecting the Delta's working landscape.³⁹

In addition, the DCP does not include enforceable measures to limit the long-term footprint of roads, ramps, staging areas, and other infrastructure that fragment agricultural landscapes and erode Delta as Place values over time, despite acknowledging significant and unavoidable agricultural impacts.⁴⁰ Nor did DWR adopt performance standards or monitoring to evaluate whether mitigation actually preserves the Delta's agricultural and rural character as required by the coequal goals framework.⁴¹ Adoption of binding, place-based mitigation measures addressing landscape integrity, agricultural continuity, and long-term land-use pressure could have reduced impacts to Delta as Place.⁴² Failure to incorporate such measures again demonstrates that the Consistency Certification for DP P2 is not supported by substantial evidence.

B. Delta Plan Policy: G P1(b)(2): Inclusion of Mitigation Measures Equally or More Effective Than those identified in the Delta Plan Environmental Impact Report (EIR) (23 CCR § 5002, subd. (b)(2))

1. DCP Mitigation Measures for Agricultural Land are not Equally or More Effective than those identified in the Delta Plan EIR.

DWR's determination that the DCP is consistent with Delta Plan Policy G P1(b)(2) is not supported by substantial evidence because it relies on voluntary, conceptual, and unspecified mitigation measures that do not demonstrate how permanent agricultural land losses will be mitigated in way that is equally or more effective than the Delta Plan requires.

³⁸ DCP FINAL EIR Ch 15, pp. 15-39 to 15-48 [DCP.D1.1.00133]; G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

³⁹ DCP FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]

⁴⁰ DCP FINAL EIR Chapter 15, pp. 15-42 to 15-48 [DCP.D1.1.00133]

⁴¹ DCP Certification of Consistency with the Delta Plan, pp. 189 to 199 [DCP.AA1.2.00001]

⁴² G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]; FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]

The Delta Plan Environmental Impact Report (Delta Plan EIR) identifies permanent farmland conversion as a significant impact and establishes a mitigation standard requiring preservation of agricultural lands in perpetuity, “at a minimum target ratio of 1:1, depending on the nature of the conversion and characteristics of the farmland” affected.⁴³

The DCP would result in significant and unavoidable impacts to agriculture, including permanent and temporary conversion of approximately 3,800 acres of Prime Farmland and other Important Farmland categories, as well as approximately 1,100 acres under Williamson Act contracts.⁴⁴ In addition, the project’s Compensatory Mitigation Program (CMP) would convert approximately 1,175 acres of Important Farmland on Bouldin Island to habitat, further reducing agricultural land.⁴⁵ Taken together, the project will result in substantial (most likely in the thousands of acres) but as yet unquantified net losses of farmland without demonstrating mitigation that is equally or more effective than the Delta Plan’s preservation standard.

DWR asserts that these conflicts with Delta Plan Policy G P1(b)(2) are avoided or reduced through a combination of project design refinements and agricultural mitigation measures identified in the DCP Final EIR and Certification of Consistency.⁴⁶ Chapter 15 of the Final EIR identifies two primary mitigation measures for agricultural impacts: Mitigation Measure (MM) AG-1 (Preserve Agricultural Land), which requires a 1:1 mitigation ratio for the permanent loss of Important Farmland, and MM AG-3 (Replacement or Relocation of Affected Infrastructure Supporting Agricultural Properties).⁴⁷ DWR states that AG-1 is intended to be equivalent to or more effective than Delta Plan MM 7-1 through acquisition and dedication of agricultural land, conservation easements, or payment of in-lieu fees to fund permanent farmland protection.⁴⁸ DWR further contends that agricultural impacts were reduced through early project planning and design modifications, prioritizing avoidance of Important Farmland and land under Williamson Act contract where feasible. For mitigation DWR also relies on implementation of voluntary Agricultural and Land Stewardship (ALS) Strategies described in Appendix 15B, which are characterized as a collaborative, non-binding framework intended to minimize the extent of farmland conversion and facilitate potential future return of some construction areas to agricultural

⁴³ G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

⁴⁴ DCP FINAL EIR, Ch 15, Table 15-7, pp. 15-32 to 15-34; Ch 15, pp. 15-42 to 15-48 [DCP.D1.1.00133]

⁴⁵ DCP FINAL EIR Chapter 15, pp. 15-39 to 15-41 [DCP.D1.1.00133]

⁴⁶ DCP Certification of Consistency with the Delta Plan, G P1(b)(2) findings, pp. 167 to 168 [DCP.AA1.2.00001], G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020], FINAL EIR Ch 15, pp. 15-39 to 15-41 [DCP.D1.1.00133]

⁴⁷ DCP FINAL EIR, Ch 15, “Mitigation Measures,” pp. 15-39–15-53 [DCP.D1.1.00133]

⁴⁸ G P1(b)(2) Att 1: DCP Mitigation Crosswalk Table, pp. 24–26; [DCP.AA1.2.00020]

use.⁴⁹

Although DWR cites Mitigation Measure AG-1 as providing 1:1 compensation for the permanent conversion of Important Farmland, neither Chapter 15 of the Final EIR nor Appendix 15B identifies where, how, or whether such mitigation can feasibly be achieved at the scale required for the DCP's known and anticipated impacts.⁵⁰ Appendix 15B confirms that no funding has been encumbered to implement agricultural conservation easements or other land-based mitigation and instead suggests that the \$200 million Community Benefit Program could be used "if there is community-driven support," an amount that is clearly insufficient to offset the scale of permanent and long-term agricultural land losses identified in the Final EIR.⁵¹

The record further lacks substantial evidence demonstrating that additional mitigation measures are infeasible. DWR does not analyze whether higher mitigation ratios, location-specific mitigation within affected Delta subregions, or alternative project designs could further reduce or compensate for farmland losses.⁵² Instead, the mitigation framework relies on future plans, discretionary funding decisions, and speculative restoration of construction areas to agriculture, without evidence that lands disturbed for up to 15 years can realistically be returned to productive use or that soil conditions, peat integrity, and long-term agricultural viability would be preserved.⁵³ Compounding these uncertainties, the FEIR acknowledges that significant and unavoidable conversion of Important Farmland would remain even with mitigation, underscoring the overall inadequacy of the mitigation program for purposes of Delta Plan consistency.⁵⁴ Because the DCP lacks specific, quantifiable, and enforceable mitigation measures to address the permanent and long-term agricultural land loss of thousands of acres, as required by Delta Plan MM-7, DWR has failed to demonstrate with substantial evidence consistency with G P1(b)(2) or protect the Delta's agricultural values as required by the Delta Plan.

The administrative record identifies several feasible actions that could further avoid or reduce agricultural impacts but were not adopted as enforceable mitigation measures. The Delta Plan MM 7-1 references agricultural land preservation in perpetuity at a minimum 1:1 ratio, scaled based on the nature and quality of the farmland converted, yet DWR did not evaluate higher or geographically targeted mitigation ratios for losses of Prime and Important Farmland within affected Delta subregions.⁵⁵ Appendix 15B also describes

⁴⁹ DCP FINAL EIR, App 15B, pp. 15B-1–15B-3, 15B-7–15B-15 [DCP.D1.1.00135]

⁵⁰ DCP FINAL EIR Ch 15, pp. 15-39 to 15-48 [DCP.D1.1.00133]; DCP FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]

⁵¹ DCP FINAL EIR App 15B, pp. 15B-13 to 15B-15 [DCP.D1.1.00135]

⁵² DCP FINAL EIR Ch 15 [DCP.D1.1.00133]; App 15B [DCP.D1.1.00135]

⁵³ G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

⁵⁴ DCP FINAL EIR Ch 15, pp. 15-42 to 15-48 [DCP.D1.1.00133]

⁵⁵ G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

multiple ALS Strategies—such as early project planning, footprint reduction, and landowner coordination—that could further minimize farmland conversion, but since these measures are voluntary, non-binding strategies and not enforceable or quantifiable, they do not demonstrate mitigation equal to or more effective as Delta Plan MM-7.⁵⁶

In addition, although the FEIR acknowledges that significant and unavoidable agricultural impacts would remain, the record does not demonstrate that DWR evaluated additional design modifications, construction sequencing changes, or consolidation of staging areas to reduce the acreage or duration of farmland disturbance.⁵⁷ Finally, while Appendix 15B suggests that temporarily disturbed lands could be returned to agricultural use, DWR did not require binding restoration standards, soil replacement criteria, or monitoring to ensure agricultural viability following construction.⁵⁸ For these additional reasons, the Consistency Certification for G P1(b)(2) for agricultural mitigation is not supported by substantial evidence.

Moreover, the Consistency Certification is not supported by substantial evidence because it greatly underestimates agricultural resources impacts, to which the Commission previously commented.⁵⁹ The Final EIR and Certification of Consistency continue to rely on impact assumptions and mitigation approaches that do not fully account for the scale, duration, and cumulative nature of agricultural land conversion associated with the Project.⁶⁰ By underestimating the extent and severity of agricultural impacts, the DCP's mitigation framework fails to demonstrate that all applicable and feasible mitigation measures have been incorporated, thus conflicting with Delta Plan Policy G P1(b)(2)'s requirement to mitigate impacts to Delta agricultural values.⁶¹

For example, DWR's conclusion that agricultural land conversion along the tunnel alignment is largely temporary is not supported by substantial evidence. Chapter 15 of the Final EIR defines "temporary" agricultural impacts as those lasting no more than two years⁶², yet the Project's estimated construction duration is approximately 13 years,⁶³ meaning many agricultural parcels would remain out of production for far longer than the EIR's own definition of temporary. Lands used for construction but not permanently

⁵⁶ DCP FINAL EIR, App 15B, pp. 15B-1–15B-3, 15B-5–15B-15 [DCP.D1.1.00135]

⁵⁷ DCP FINAL EIR Ch 15, pp. 15-24 to 15-48 [DCP.D1.1.00133]

⁵⁸ DCP FINAL EIR App 15B, pp. 15B-1 to 15B-3 and 15B-5 to 15B-15 [DCP.D1.1.00135]

⁵⁹ FINAL EIR Vol 2, Ch 2, Table 4-2 comments 409-22- 409-23; [DCP.D1.1.00241, DCP.D1.1.00224]

⁶⁰ DCP FINAL EIR Ch 15, pp. 15-39 to 15-48 [DCP.D1.1.00133]; DCP FINAL EIR App 15B, pp. 15B-1 to 15B-11 [DCP.D1.1.00135]; G P1(b)(2) Att 1: Mitigation Crosswalk Table, pp. 24 to 26) [DCP.AA1.1.00020]

⁶¹ DCP FINAL EIR Ch 15 [DCP.D1.1.00133]; App 15B [DCP.D1.1.00135]

⁶² DCP Final EIR Chapter 15, p. 15-26 [DCP.D1.1.00133]

⁶³ DCP Final EIR Chapter 3, pp. 3-132 to 3-133 [DCP.D1.1.00010]

occupied would be fallow for extended periods and subject to soil modification, compaction, and disturbance, calling into question their ability to be successfully reclaimed for agricultural use. Other parcels would be bisected by project features such as roads and facilities, leaving fragmented remnants that are too small, inaccessible, or impractical to farm. In addition, roads, ramps, and other facilities left in place would increase long-term pressure for nonagricultural use in areas purportedly designated for eventual agricultural return.

Delta Plan Mitigation Measure 7-1 requires avoidance or minimization of farmland fragmentation, yet the G P1(b)(2) Mitigation Crosswalk asserts consistency without explaining how fragmentation was measured, what metrics or thresholds were applied, whether design changes were made to reduce fragmentation, or what residual impacts remain. Instead, the Crosswalk relies on generalized statements that project components were “sited to avoid agricultural land to the extent possible,” without data or examples demonstrating avoided impacts. Commission GIS staff review of DWR’s project footprint datasets further indicates that fragmentation impacts are substantial and largely undisclosed, including isolated agricultural remnants, narrow and irregular parcels, and lands severed from infrastructure access. These fragmentation effects are not meaningfully evaluated in the record and are not reconciled with the Delta Reform Act’s directive to protect the Delta’s agricultural landscape as a coherent and functional whole.⁶⁴

The record shows that DWR could have taken several feasible analytical steps to avoid underestimating agricultural impacts but did not. Chapter 15 defines “temporary” impacts as those lasting no more than two years, yet DWR did not classify construction impacts extending up to approximately 13 years as permanent or near-permanent conversion for purposes of impact assessment and mitigation, despite acknowledging extended construction timelines.⁶⁵ Treating long-duration construction areas as permanent losses would have more accurately reflected agricultural productivity impacts.

In addition, although Delta Plan Mitigation Measure 7-1 requires avoidance or minimization of farmland fragmentation, DWR did not quantify fragmentation, establish viability thresholds, or analyze how bisected parcels and remnant fields affect long-term farm operations.⁶⁶ The G P1(b)(2) Mitigation Crosswalk asserts compliance without documenting how fragmentation was measured or avoided, contributing to understatement of indirect impacts (G P1(b)(2) Mitigation Crosswalk). Finally, Appendix 15B assumes that disturbed lands could be returned to agriculture but does not require soil testing, productivity benchmarks, or monitoring to support that assumption, leaving

⁶⁴ DCP FINAL EIR Ch 15 [DCP.D1.1.00133]; App 15B [DCP.D1.1.00135]

⁶⁵ DCP Final EIR Chapter 15, p. 15-26 [DCP.D1.1.00133]

⁶⁶ DCP FINAL EIR Ch 15 [DCP.D1.1.00133]; DCP Consistency G P1(b)(2) Mitigation Crosswalk Table, pp. 24 to 26 [DCP.AA1.2.00020]

long-term losses

unaccounted for.⁶⁷

2. Delta Conveyance EIR Mitigation Measures for Cultural Resources are not Equally or More Effective than the Delta Plan EIR.

The Delta Plan EIR states that a project should inventory and evaluate cultural landscapes and develop specific strategies to avoid or protect these landscapes if feasible. DWR claims that DCP mitigation measures seek to avoid or minimize disturbance or loss of historical and archaeological resources and that the project analysis and mitigation measures are the same as, equal to, or more effective than Delta Plan Mitigation Measure 10-3.⁶⁸ DCP Mitigation Measure CUL-1a includes redesign or modification of relevant facilities and/or construction activities to avoid or minimize impacts on built-environment historical resources or their settings, to the extent feasible. Mitigation Measure CUL-1b requires preparation of a built-environment treatment plan for each built-environment historical resource affected by the project and additional studies conducted pursuant to Mitigation Measure CUL-2. Mitigation Measure CUL-1b also outlines provisions for relocation and restoration of historic resources.⁶⁹

DWR's consistency determination for cultural resource mitigation is not supported by substantial evidence because the FEIR's analysis provides only a cursory assessment and limited view of the cultural landscape within the DCP's area of impact. The EIR's criteria for what cultural landscapes to evaluate is highly restrictive and therefore narrowly limits the analysis required by Delta Plan mitigation measures. Only Bouldin Island and Staten Island were considered potential cultural landscapes because "the whole of each island was included in the AI-BE [Area of Impact for Built-Environment Resources], fieldwork demonstrates existing landscape features for evaluation, and access to each island was readily available. Additional islands, such as Mandeville Island, Venice Island, Lower Roberts Island or King Island, could be evaluated as cultural landscapes, either individually or as a cohesive cultural landscape. This level of analysis was outside of the scope of this project...."⁷⁰ The reason why analysis of these areas was outside of the project scope is not provided, even though evidence supplied by the Commission exists to indicate that these areas qualify as cultural or historical landscapes that are within the DCP's sphere of impact and should be evaluated.⁷¹

⁶⁷ DCP FINAL EIR App 15B, pp. 15B-1 to 15B-14 [DCP.D1.1.00135]

⁶⁸ Delta Plan Mitigation Measures 10-1 and 10-3 [DCP AA2.1.00097]; G P1(b)(2) Attachment 1: Delta Plan and DCP Mitigation Crosswalk Table pp 38-40 [DCP.AA1.1.00020]

⁶⁹ DCP FINAL EIR Ch 19, p. 19-45-19-48 [DCP.D1.1.00162]

⁷⁰ DCP FINAL EIR App 19A, pp. 15-16 [DCP.D1.1.00164]

⁷¹ Delta Prot. Comm. Comments, Delta Conveyance DEIS, Pub Notice SPK-2019-00899 [DCP.AA5.1.00002]

The Commission has repeatedly recommended more thorough assessment of the cultural landscape, in comments on the DEIR and DEIS.⁷² For example, the Commission recommended adherence to National Park Service standards (Preservation Brief 36: Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes). The DEIR's Appendix 19A reiterates these steps but *fails to systematically apply them to the Delta districts and properties potentially eligible for listing in the National Register that the project will affect*. As the section titles and contents of the DEIS' Chapter 3.7 and DEIR's Chapter 19 confirm, *the DEIS and DEIR assess only buildings and structures, rather than the full range of historical landscape resources*. Previously completed assessments of cultural landscapes at Bouldin and Staten Island are recognized, but *equally thorough descriptions and evaluations are not provided for other similar features, such as Pearson District and Roberts Island*. In these areas, assessments are offered only for individual structures, such as levees or an individual pumphouse, with little mention of their role in these tracts' overall landscapes or the tracts' other character-defining features, such as orchards, vineyards, crops, and farm buildings. The text regarding historical context of these resources in the DEIR's Appendix 19A is *insufficient for assessing important landscapes affected by the project, as it portrays only a handful of communities (Brentwood, Byron, Stockton, Tracy, and Mountain House), some only lightly affected by the project, while omitting others, including Hood and Courtland, that will be at the center of damaging project impacts*. The historical context provided for Delta farmlands is equally incomplete, describing the Delta's diverse agriculture in only four paragraphs about "industrial agriculture" in San Joaquin County from the 1910s to 1950s. Entirely ignored is 19th century agriculture, during which patterns of land tenure, farming systems, labor, and agricultural markets were established.⁷³

In spite of the Commission's previous comments, DWR has not assessed these areas or provided an explanation for why these areas are not being assessed. Therefore the record does not provide substantial evidence to support DWR's claim of consistency with G P1(b)(2) as it relates to cultural resources. DWR cannot rely only on incomplete assessments of cultural landscapes in order to support a claim of consistency with Delta Plan Mitigation Measure 10-3. The Commission prepared and provided to both the Corps of Engineers and DWR, a *Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area*⁷⁴ as an aid to assessment of the cultural landscapes affected by the project, yet DWR has not addressed this. Commission Maps 6 and 7, submitted with the Commission's request for official notice, graphically demonstrate the importance of understanding the cultural landscape.

At each step of the DCP planning and construction process, the DCP mitigation measures

⁷² Ibid

⁷³ FINAL EIR Vol 2, Ch 2, Table 4-2 comments 409-28, 409-29, 409-30, 409-31 pp 43-48 [DCP.D1.1.00241]

⁷⁴ [DCP.AA5.1.00002]

fail to protect cultural landscapes as required by Delta Plan mitigation measures. Delta Plan Mitigation Measures 10-1(c), 10-1(d), and 10-3(a) require that projects survey and evaluate landscape resources and cultural landscapes prior to the start of ground-disturbing activities.⁷⁵ The DCP includes no such commitment, instead relying on a piecemeal, resource-specific mitigation approach that once again loses the forest (cultural landscape) for all the individual trees (each resource individually).

Even if adequate assessment of Delta cultural landscapes had occurred, DWR is not providing the required level of mitigation for impacts because it essentially ignored the impacts and has not committed to mitigation equal to or more effective than required by the Delta Plan. Therefore, DWR does not have any evidence, let alone substantial evidence, to demonstrate compliance with G P1(b)(2) as it relates to cultural landscapes.

C. Delta Plan Policy: G P1(b)(3): Covered Actions Consistent with the Delta Plan's Criteria for Best Available Science

1. Delta Conveyance Project EIR Fails to Use Best Available Science in Determining Recreational Use, Significantly Underestimating Adverse Project Effects.

The Consistency Certification for G P1(b)(3) for recreation is not supported by substantial evidence because it does not use best available science (BAS) regarding recreation data as required by the Delta Plan.⁷⁶ The FEIR Methods for Analysis and Thresholds of Significance for recreation are flawed and fail in several BAS criteria, including relevance, inclusiveness, objectivity, timeliness and peer review. Here we focus on the BAS criteria of relevance, inclusiveness and objectivity, based in part on the Delta Stewardship Council's Final Determination C20215 for Lookout Slough, which, in summary found that particular Certification was not supported by substantial evidence in the record based on Best Available Science criterion 2, inclusiveness, specifically related to the methods used to estimate recreation use, and remanded the project to DWR for reconsideration.^{77 78}

The Delta Plan guidance for relevance requires that the scientific information used should be germane to the Delta components and/or process affected by the proposed decisions, and that quality and relevance of the data and information used shall be clearly addressed; inclusiveness requires that scientific information used shall incorporate a thorough review of relevant information and analyses across relevant disciplines. Many analysis tools are available to the scientific community. Objectivity requires that data collection and

⁷⁵ DCP.AA1.1.00020, pp. 35 (Cul MM 10-1), 38-39 [Cul MM 10-3]

⁷⁶ Delta Plan, App 1A, Table 1A-1

⁷⁷ Delta Stewardship Council Final Determination C20215 Lookout Slough page 58 Available: https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=ba3c59bf-e359-2049f7-b866-60fa781325d0. [DCP.AA2.7.00006]

⁷⁸ Ibid, page 59

analyses considered shall meet the standards of the scientific method and be void of nonscientific influences and considerations.⁷⁹ The DCP FEIR, does not meet the Delta Plan's requirement for BAS for recreation with regard to these criteria because it relies on a mere handful of interviews and a site reconnaissance survey, which were neither quality nor thorough. DWR claimed that more extensive surveys could not be achieved due to Covid-19 restrictions, and the FEIR claimed:

"Because of the COVID-19 pandemic, recreation use patterns have been altered, and direct observation or survey of users would likely result in atypical conditions not representative of typical recreation use patterns, levels, and conditions."⁸⁰

The underlined statements are pure speculation, and without data are unsupported by facts. The DISB also raised issues with the quality of the analysis in the EIR, including clear evidence to support findings of less than significant impacts, and that impact significance was determined "uneven[ly] across indicators with some determinations being based on scant evidence and unclear methods."⁸¹

The only project-specific data DWR gathered for the DCP was in February 2021. The extent of this data collection is minimal. Interviews were conducted with eight (8) recreation practitioners for the entire Delta. Interviews ranged from 20 minutes to at most 45 minutes with various staff at local park agencies, state parks district and one (1) marina (Windmill Cove). All interviewees were described as providing "insights," not data. Several clearly stated they did not conduct counts of users, nor did they know when the highest use is, etc.⁸² The reconnaissance study likewise provides little actual data on use patterns to indicate use of best available science. It consisted of a two-day windshield survey in February 2021 of twenty-five recreation sites in the Delta out of the potential hundreds of sites that should have been included after careful evaluation of their relevance to identifying project impacts on recreation.⁸³ DWR failed to collect real time data of recreational use to support the literature review it completed, claiming the literature represents the "best available information" to offer more "insight into recreation use" areas and long-term patterns that can help determine probable typical use patterns in non-pandemic conditions.⁸⁴ This spare effort is not substantial evidence.

Significantly, the record clearly shows that data collection was feasible for another DWR project in the same year, within months of the February 2021 paltry effort to assess

⁷⁹ Delta Plan, App 1A, Table 1A-1

⁸⁰ FINAL EIR Ch 16.3.2, p.16-18 [DCP.D1.1.00149]

⁸¹ Delta Independent Science Board (DISB). Review of the Draft EIR for the Delta Conveyance Project. Comment 534-7, p. 267 [DCP.D1.1.00242]

⁸² FINAL EIR App 16A-1_Recreation_Provider_Interviews [DCP.D1.1.00150]

⁸³ App 16A-2_DCP_Recreation_Field Reconnaissance Notes [DCP.D1.1.00150]

⁸⁴ FINAL EIR Ch 16, p.16-14 [DCP.D1.1.00149]

recreational use for the Delta that would be affected by the DCP. In response to the Council's remand of the Lookout Slough, DWR conducted and submitted in its recertification Covered Action C202210, the report *Attachment 2 – Technical Analysis – Consistency with Policy G P1(B)(3): Best Available Science Methods Used to Estimate Recreational Use - Lookout Slough Tidal Habitat Restoration and Flood Improvement Project*.⁸⁵

From August 2021 to October 2021 DWR collected data on recreational use at Lookout Slough in response to the successful appeal of Best Available Science by Liberty Island Access. The study methods described in detail in the report include best practices for survey research (vetting, peer review, and pretesting). Visitor survey preparation included multiple review/revision cycles with three Ph.D.-level scientists reviewing and pretesting the survey. The entire data collection team participated in on-site training. Motion-activated camera data was gathered, with quality assurance measures to verify that the data had no duplicates. Data collected included:

- Total Recreation Vehicle Counts from motion-activated cameras on Liberty Island Road during weekdays and weekend days, August 2 to October 31, 2021; and
- Average Recreation Vehicle Counts from motion-activated cameras on Liberty Island Road during weekdays and weekend days, August 2 to October 31, 2021.⁸⁶

DWR's ability to properly gather BAS data to assess recreation impacts for another covered action in the same time frame as it was declining to do so for DCP demonstrates that DCP's recreation impacts are not based on BAS, and therefore the Consistency Certification for BAS on recreation is not supported by substantial evidence.

In conclusion, the Commission thanks the Delta Stewardship Council for their commitment to upholding the coequal goals and the resources you're dedicating to this appeals process.

Sincerely,



Amanda Bohl
Executive Director

cc: Members, Delta Protection Commission

⁸⁵ DWR. Attachment 2 – Technical Analysis – Consistency With Policy G P1(B)(3): Best Available Science Methods Used to Estimate Recreational Use, DWR, December 2021, submitted with Commission's Request for Official Notice and noticeable under Evidence Code sections 452(c) and 452(h.)

⁸⁶ Ibid, pp. 19-20