

California WaterFix: Staff Draft Determination Regarding Appeals of Certification of Consistency

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Overview

- Council's covered action authority and process
- Summary of staff report and draft Determination
- Staff analysis and draft recommendation
 - *Staff recommends that the Council conclude substantial evidence does not exist in record to support a finding of consistency*
 - *Staff recommends that the Council remand the matter to the Department for reconsideration*

Covered Actions

- 2009 Delta Reform Act
 - State of California's policy to achieve the coequal goals
 - Granted Council regulatory and appellate authority over covered actions
- Delta Plan
 - Regulatory policies to meet objectives the Legislature said were inherent in the coequal goals
- Covered Action Authority
 - State and local agencies must demonstrate consistency with Delta Plan policies when carrying out, approving, or funding covered actions, prior to implementation

Certifications and Appeals

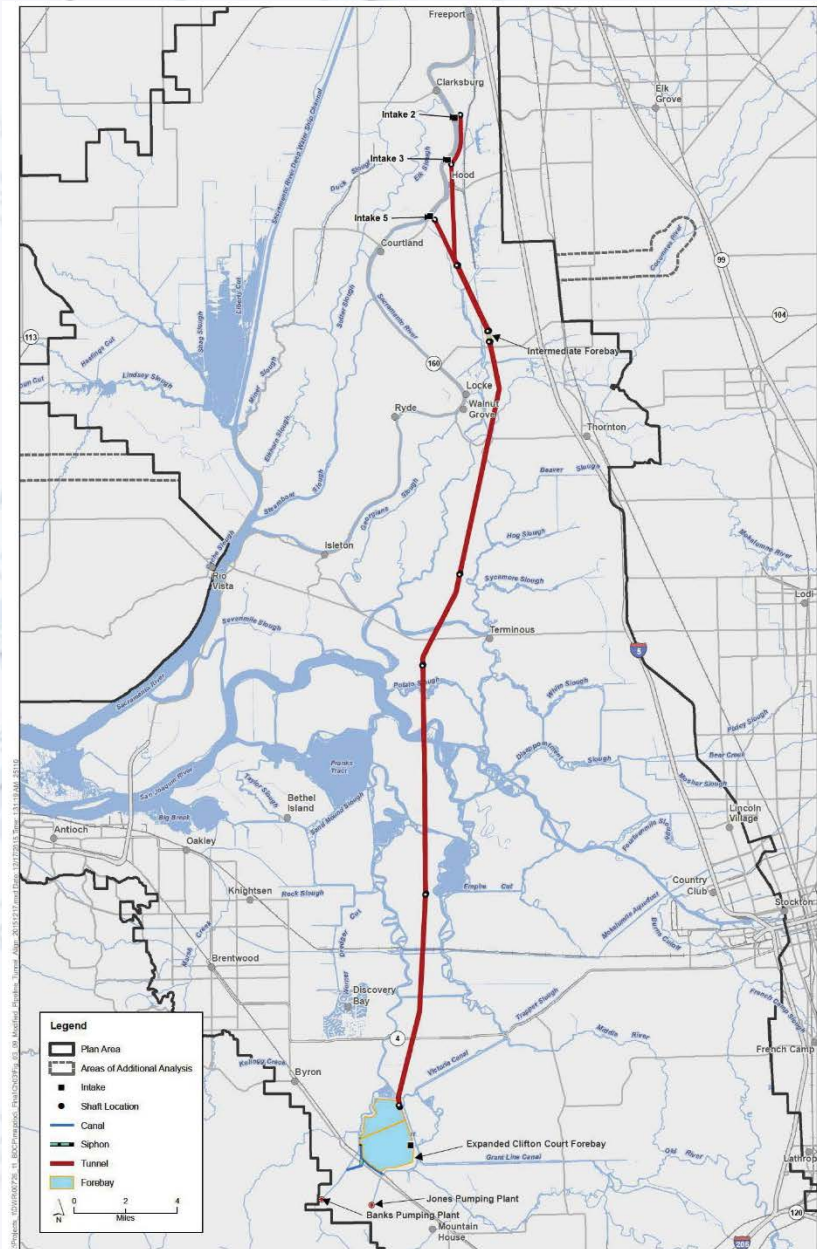
- Certification of Consistency
 - Proponent determines if a project is a covered action
 - Covered actions require written certification with detailed findings
- Appeals
 - Any person who claims a covered action is inconsistent with the Delta Plan may file an appeal within 30 days
 - Appeal must include specific factual allegations
- Certifications and appeals are noticed and listed on Council website

Hearings and Determination

- Council must conduct a hearing on appeals within 60 days of filing
- Council must make a decision regarding appeals within 60 days of the hearing
- Determination options:
 - *Deny appeals* - project may proceed
 - *Remand the project* to proponent for reconsideration

Project Description: California WaterFix

- SWP physical improvements
 - New north Delta intakes
 - Expanded south Delta intakes
 - Underground tunnels connect the two
- Enables SWP to operate using dual-conveyance
 - Diversions from north Delta
 - Option to divert from south Delta under certain conditions



Project Description

- Project the Department has certified as consistent with Delta Plan is California WaterFix as described in the 2017 Final EIR/EIS
- Several other overlapping review and approval processes underway
 - Draft Supplemental EIR/EIS
 - SWRCB Hearings on Change in Point of Diversion
 - SWP contract amendments

Department's Certification

Delta Plan Policy	Policy Title	Department's Finding
G P1 (b)(1) (23 CCR section 5002(b)(1))	Detailed Findings – Overall Consistency	Consistent
G P1 (b)(2) (23 CCR section 5002(b)(2))	Detailed Findings - Mitigation Measures	Consistent
G P1 (b)(3) (23 CCR section 5002(b)(3))	Detailed Findings - Best Available Science	Consistent
G P1 (b)(4) (23 CCR section 5002(b)(4))	Detailed Findings - Adaptive Management	Consistent
WR P1 (23 CCR section 5003)	Reduce Reliance on the Delta through Improved Regional Water Self-Reliance	Consistent
WR P2 (23 CCR section 5004)	Transparency in Water Contracting	n/a
ER P1 (23 CCR section 5005)	Delta Flow Objectives	Consistent
ER P2 (23 CCR section 5006)	Restore Habitats at Appropriate Elevations	Consistent
ER P3 (23 CCR section 5007)	Protect Opportunities to Restore Habitat	Consistent
ER P4 (23 CCR Section 5008)	Expand Floodplains and Riparian Habitats in Levee Projects	Consistent
ER P5 (23 CCR Section 5009)	Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species	Consistent
DP P1 (23 CCR section 5010)	Locate New Urban Development Wisely	n/a
DP P2 (23 CCR section 5011)	Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats	Consistent
RR P1 (23 CCR section 5012)	Prioritization of State Investments in Delta Levees and Risk Reduction	Consistent
RR P2 (23 CCR section 5013)	Require Flood Protection for Residential Development in Rural Areas	n/a
RR P3 (23 CCR section 5014)	Protect Floodways	Consistent
RR P4 (23 CCR section 5015)	Floodplain Protection	Consistent

Appeals

Appeal Number	Appellant Group	Delta Plan Policies Appealed	
C20185-A1	North Coast Rivers Alliance, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, Winnemem Wintu Tribe	G P1(b)(2) G P1(b)(3) G P1(b)(4) WR P1 ER P1	ER P2 ER P3 ER P5 DP P2
C20185-A2	Save the California Delta Alliance	G P1(b)(2) G P1(b)(3) G P1(b)(4) WR P1	WR P2 ER P1 DP P2
C20185-A3	Friends of the River, California Sportfishing Protection Alliance, California Water Impact Network, Planning and Conservation League, AquAlliance, Environmental Water Caucus, Sierra Club California, Restore the Delta	G P1(b)(2) G P1(b)(3) G P1(b)(4) WR P1	ER P1 ER P2 ER P3
C20185-A4	North Delta CARES Action Committee	DP P2	
C20185-A5	City of Stockton	G P1(b)(2) G P1(b)(3)	WR P1
C20185-A6	Sacramento Regional County Sanitation District	DP P2	
C20185-A7	San Joaquin County, Contra Costa County, Solano County, Yolo County, Local Agencies of the North Delta	GP 1(b)(1) GP 1(b)(2) GP 1(b)(3) GP 1(b)(4) WR P1	WR P2 ER P1 DP P2 RR P1
C20185-A8	Central Delta Water Agency, South Delta Water Agency	WR P1 ER P1	
C20185-A9	County of Sacramento, Sacramento County Water Agency	GP 1(b)(1) GP 1(b)(3) GP 1(b)(4)	WR P1 DP P2

Substantial Evidence Standard

- Scope of Council's review is whether the Certification is supported by substantial evidence
- Substantial evidence is ...
 - Facts
 - Reasonable assumptions based upon facts
 - Expert opinion supported by facts
- Substantial evidence is not ...
 - Argument
 - Speculation
 - Unsubstantiated opinion
 - Evidence that is erroneous or inaccurate

Council Review

- Staff's analysis and findings are based on:
 - Project submitted by Department
 - Issues raised on appeal
 - Substantial evidence in the record
- Council does not independently review the project to determine if it is consistent with Delta Plan
- Council does determine if substantial evidence in record supports Department's Certification that the project is consistent with Delta Plan, in light of appeals

Record

- Department certified record as full and complete on September 7, 2018
- Record contains more than 26,000 documents
 - Decision documents (notices, resolutions, CEQA findings)
 - Environmental impact documents and permits
 - Draft and final Certification documents
 - Public comments received during 10-day review period
- Additions to record described in staff draft Determination

Delta Protection Commission Role

- Commission has important advisory role in Council proceedings
 - PRC section 29773 - Commission may review and provide comments and recommendations to Council on projects within the scope of the Delta Plan, including projects that affect Delta as Place
 - Council's procedures invite Commission to address Council regarding appeals during public hearings
- Commission submitted recommendations and comments October 16, 2018
- Staff draft Determination considers Commission's comments and recommendations that are related to issues raised by Appellants

Hearing

- Department, Appellants, Commission, and other persons provided testimony at hearing October 24-26, 2018
 - Addressed in staff draft Determination



Staff Draft Determination

- Today's workshop noticed on October 29, 2018
- Staff draft Determination released November 8, 2018
 - Analysis and findings regarding appeals based on record and hearing
 - Opportunity for Council members to discuss and offer direction to staff on its recommended findings
- Public comment period through November 19, 2018 at noon
- Final Council action anticipated following hearing in December

Staff Draft Findings:

Appellants Assert Premature Submittal

- Appellants assert timing of Department's submittal is premature based on:
 - Draft Supplemental EIR/EIS
 - CVP operations and Reclamation participation in project
 - Ongoing SWRCB Change in Point of Diversion hearings
 - SWP contract amendments
- Each may result in future project change(s)
- Staff recommends timing of Certification is not premature
- Staff recommends early and robust consultation to determine if proposed changes are covered action(s)

Staff Draft Findings: Delta Plan Policy on Appeal	Substantial Evidence Supports Department's Certification?
WR P2 Transparency in Water Contracting	n/a
ER P2 Restore Habitats at Appropriate Elevations	
RR P1 Prioritization of State Investments in Delta Levees and Risk Reduction	
G P1 (b)(2) Detailed Findings - Mitigation Measures	Yes
G P1 (b)(4) Detailed Findings - Adaptive Management	
ER P3 Protect Opportunities to Restore Habitat	
ER P5 Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species	No
G P1 (b)(3) Detailed Findings - Best Available Science	
WR P1 Reduce Reliance on the Delta through Improved Regional Water Self-Reliance	
ER P1 Delta Flow Objectives	
DP P2 Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats	
G P1 (b)(1) Detailed Findings – Overall Consistency	

Staff Draft Findings

Policies Do Not Apply

- **WR P2:** Transparency in Water Contracting
 - Contract amendments are outside the Certification's project scope, but may be future covered action(s)
- **ER P2:** Restore Habitats at Appropriate Elevations
 - Not possible to determine the elevation proposed for each site
 - Future restoration activities may be covered actions
- **RR P1:** Prioritization of State Investments in Delta Levees and Risk Reduction
 - Not a discretionary State investment or flood risk management project

Staff Draft Findings

Appellants Fail to Demonstrate that Department's Certification is not Supported by Substantial Evidence

- **GP 1(b)(2):** Detailed Findings – Mitigation Measures
- **GP 1(b)(4):** Detailed Findings – Adaptive Management
- **ER P3:** Protect Opportunities to Restore Habitat
- **ER P5:** Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Policy GP 1(b)(2): Detailed Findings – Mitigation Measures

- Policy requires inclusion of applicable feasible mitigation measures equal to or more effective than mitigation measures in the Delta Plan PEIR
- Department's Finding: *Consistent*
 - Crosswalk between WaterFix mitigation measures and Delta Plan PEIR mitigation measures
- Key Appeal Issues
 - Vague and unenforceable
 - Improperly deferred
 - Not equal to or more effective than Delta Plan PEIR measures

Policy GP 1(b)(2): Detailed Findings – Mitigation Measures

- Staff Analysis
 - Appellants do not identify California WaterFix measures that fall short of Delta Plan’s “equal to or more effective” standard
 - Department cites to enforceable measures in FEIR/EIS and a commitment to implement these prior to construction
- **Conclusion:** *Appellants fail to demonstrate that Department’s Certification is not supported by substantial evidence*

Policy GP 1(b)(4): Detailed Findings – Adaptive Management

- Policy requires that covered actions include “adequate provisions, appropriate to the scope of the covered action...,” which includes both
 - (a) an adaptive management plan that describes the approach to be taken consistent with the framework in [Delta Plan] Appendix 1B, and
 - (b) “documentation of access to adequate resources and delineated authority...” to implement the proposed adaptive management process

Policy GP 1(b)(4): Detailed Findings – Adaptive Management

- Department's Finding: *Consistent*
 - Project-wide Adaptive Management Program (PAMP), outlines an approach consistent with Appendix 1B and documents access to adequate resources and delineated authority
 - PAMP includes the Biological Opinions Adaptive Management Program (BiOp AMP) and adaptive management to address measures in the Mitigation Monitoring and Reporting Program (MMRP)

Policy GP 1(b)(4):

Detailed Findings – Adaptive Management

- Key Appeal Issues
 - Consistency with Appendix 1B Adaptive Management Framework
 - Documentation of adequate resources and delineated authority
- Staff Analysis
 - Appellants' claims are not tied to policy requirements
 - Deficiencies identified by Appellants in the BiOp AMP are addressed in the PAMP
 - Department provided substantial evidence documenting adequate resources and delineated authority
- **Conclusion:** *Appellants fail to demonstrate Certification not supported by substantial evidence*

Policy ER P3:

Protect Opportunities to Restore Habitat

- Policy requires projects to avoid or mitigate significant adverse impacts to the opportunity to restore habitat in Priority Habitat Restoration Areas identified in Delta Plan
- Department's Finding: *Consistent*
- Key Appeal Issues:
 - Potential contamination of habitat and more than a decade of construction
 - Measures to minimize or avoid impacts rely on future plans
 - Reducing freshwater flows will impact opportunity to restore

Policy ER P3:

Protect Opportunities to Restore Habitat

- Staff Analysis
 - Evidence in the record shows that batch plants and fuel station will be temporary and identifies mitigation measures
 - Detailed performance standards have been developed for future plans
 - Appellants do not cite to evidence explaining how project would preclude ability to restore habitat.
- **Conclusion:** *Appellants fail to demonstrate that Department's Certification is not supported by substantial evidence*

Policy ER P5:

Avoid Introductions of and Habitat Improvements for Nonnative Invasive Species

- Policy requires that introductions of or improved habitat conditions for nonnative invasive species be fully considered and avoided or mitigated
- Department's Finding: *Consistent*
 - Final EIR/EIS analysis considers potential introductions of or improved habitat conditions for nonnative invasive species
 - Certification cites enforceable mitigation measures, permits, adaptive management actions, and invasive species programs

Policy ER P5:

Avoid Introductions of and Habitat Improvements for Nonnative Invasive Species

- Key Appeal Issues
 - Construction is likely to introduce or disperse invasive species
 - Post-introduction mitigation is insufficient or misplaced
- Staff Analysis
 - Department acknowledges potential of opening habitat to invasive species, but cites to enforceable measures and various plans and commitments
 - Appellant makes general claims regarding sufficiency of mitigation, general claims are not tied to policy requirements
- **Conclusion:** *Appellants fail to demonstrate that Department's Certification is not supported by substantial evidence*

Staff Draft Findings

Department Fails to Demonstrate Substantial Evidence in Record to Support Findings

- **G P1(b)(3):** Detailed Findings – Best Available Science
- **WR P1:** Reduce Reliance on the Delta through Improved Regional Water Self-Reliance
- **ER P1:** Delta Flow Objectives
- **DP P2:** Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats
- **G P1(b)(1):** Detailed Findings – Coequal Goals

Policy G P1(b)(3): Detailed Findings – Best Available Science

- Policy requires that as relevant to the purpose and nature of the project, all covered actions must document use of best available science
- Best Available Science criteria in Delta Plan Appendix 1A
 - Relevance
 - Inclusiveness
 - Objectivity
 - Transparency and Openness
 - Timeliness
 - Peer Review

Policy G P1(b)(3): Detailed Findings – Best Available Science

- Department's Finding: *Consistent*
 - **Relevance:** Utilized a wide range of relevant data, literature, and tools, some specific to the Delta
 - **Inclusiveness:** Drew on a number of scientific and engineering disciplines
 - **Objectivity:** Collected data and performed analyses void of nonscientific influences
 - **Transparency and Openness:** Used publicly available models, data, and literature; released public drafts and hosted public meetings
 - **Timeliness:** Took into account new and updated information
 - **Peer Review:** Relied on peer-reviewed literature and subjected data, models, literature, and analyses to review

Policy G P1(b)(3): Detailed Findings – Best Available Science

- Key Appeal Issues
 - Modeling – **Relevance, Inclusiveness**
 - Missing content – **Inclusiveness, Objectivity**
 - Adequacy of impact analysis – **Relevance, Inclusiveness, Timeliness**
 - Sea-Level Rise (SLR) projections – **Timeliness**

Policy G P1(b)(3): Detailed Findings – Best Available Science

- Staff Analysis: Modeling
 - CalSim II and DSM2 are best available models
 - Specific analyses provided in record substantiate modeling
- Staff Analysis: Missing Content
 - Appeals are broad and fail to specify missing content
 - Staff cannot evaluate potential validity of issues raised
- Staff Analysis: Adequacy of Impact Analysis
 - Appellants raise issues, but relevance to policy is not supported
 - Department cites to record showing impact analyses performed using Best Available Science on appeal issues

Policy G P1(b)(3): Detailed Findings – Best Available Science

- Staff Analysis: Sea-Level Rise Projections – **Timeliness**
 - The Department's SLR modeling does not consider higher risk scenarios as recommended by NOAA and California OPC reports
 - Council staff could not find evidence in the record for modeling or sensitivity analyses that consider higher risk scenarios beyond 2060
- **Conclusion:** *The Department's Certification that its sea-level rise modeling reflects the Best Available Science is not supported by substantial evidence in the record*

Policy WR P1:

Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:

(a)(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.



(a)(1) One or more water suppliers have failed to adequately contribute to reduced reliance on the Delta consistent with the requirements in (c)(1).



(a)(2) That failure has significantly caused the need for the export, transfer, or use.



(c)(1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are consistent with this policy:

- ☐ Completed a current Urban or Agricultural Water Management Plan. **(c)(1)(A)**
- ☐ Commenced implementation of Management Plan programs and projects to reduce reliance on the Delta. **(c)(1)(B)**
- ☐ Management Plans include expected outcome for measurable reduction in amount or percentage of water used from the Delta. **(c)(1)(C)**

Policy WR P1:

Does Policy WR P1 apply to this project?

- Department's Certification
 - WR P1 applies only to a new water export, transfer, or in-Delta project
 - California WaterFix does not propose new exports and would amend existing water rights for the 3 new points of diversion
- Key Appeal Issues
 - Multiple Appellants dispute Department's interpretation
 - This interpretation would not reduce current reliance of water suppliers on the Delta
- Staff Analysis
 - WR P1 is not limited to a new or expanded water right
 - WR P1 applies to California WaterFix

Policy WR P1:

(a)(3) Significant Adverse Environmental Impact

Water shall not be exported from, transferred through, or used in the Delta if:

(a)(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.

- Department's Certification
 - Project would not have “a significant adverse environmental impact”
 - Response to hearing questions notes criterion for subdivision (a)(3) has been met
- Key Appeal Issues
 - Export projections
 - Amount of water exported does not ensure the Project would not have a significant adverse environmental impact
- Staff Analysis
 - Subdivision (a)(3) applies to this project

Policy WR P1:

(a)(1) Reduced Reliance

Water shall not be exported from, transferred through, or used in the Delta if:

(a)(1) One or more water suppliers have failed to adequately contribute to reduced reliance on the Delta consistent with the requirements in (c)(1).



(c)(1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are consistent with this policy:

- ☐ Completed a current Urban or Agricultural Water Management Plan. **(c)(1)(A)**
- ☐ Commenced implementation of Management Plan programs and projects to reduce reliance on the Delta. **(c)(1)(B)**
- ☐ Management Plans include expected outcome for measurable reduction in amount or percentage of water used from the Delta. **(c)(1)(C)**

- Department's Certification
 - Provides extensive information for some suppliers
 - Recognizes partial compliance with policy
 - Strict compliance with policy not required
- Key Appeal Issues
 - Strict interpretation of the policy is required
- Staff Analysis
 - Elements of subdivision (a)(1)(c)(1) are required
 - Subdivision (a)(1) applies to this project

Policy WR P1:

(a)(2) Failure to Reduce Reliance Caused Need for Project

Water shall not be exported from, transferred through, or used in the Delta if:

(a)(2) That failure has significantly caused the need for the export, transfer, or use.

- Department's Certification
 - Need for project was not significantly caused by failure to reduce reliance
 - Caused by factors that pre-date and exist independently of the reduced reliance policy
- Key Appeal Issues
 - Need for project is direct result of failure to reduce reliance
- Staff Analysis
 - Absent complete and quantitative data required by subdivision (a)(1)(c)(1), the Department cannot analyze whether failure to reduce reliance caused need for the project
 - Subdivision (a)(2) applies to this project

Policy WR P1:

Staff Recommendation

Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:

(a)(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.



(a)(1) One or more water suppliers have failed to adequately contribute to reduced reliance on the Delta consistent with the requirements in (c)(1).



(a)(2) That failure has significantly caused the need for the export, transfer, or use.

Conclusion: *Department fails to demonstrate substantial evidence in the record to support finding of consistency.*

Policy WR P1:

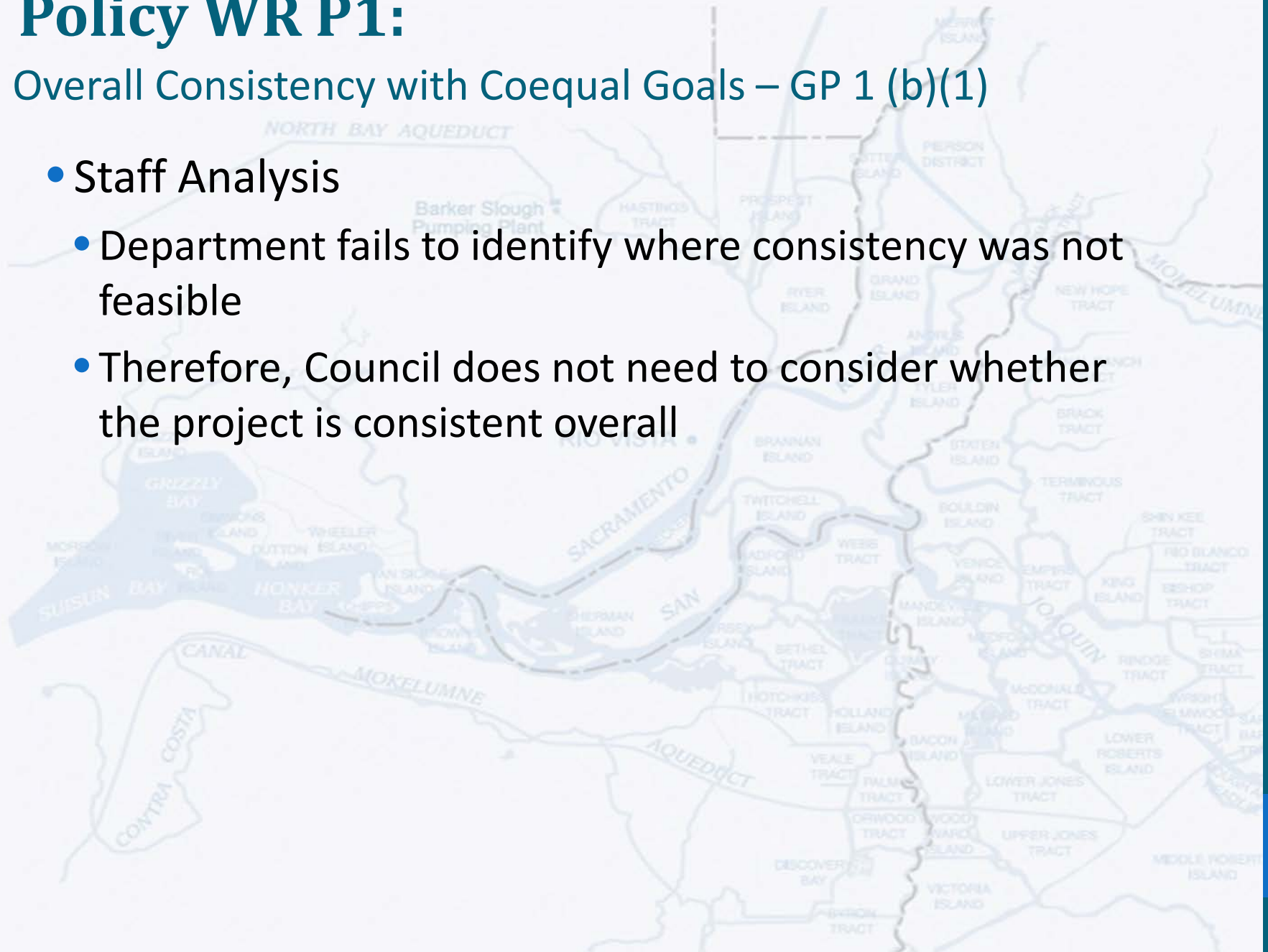
Overall Consistency with Coequal Goals – GP 1 (b)(1)

- Department's Certification
 - Demonstrating reduced reliance in the manner required by (a)(1) is infeasible
 - Water management planning statutory requirements
 - Limited Department authority
 - Information does not exist in format required by WR P1
- Key Appeal Issues
 - Lack of requirement, not the same as a prohibition
 - Lack of Department authority does not excuse water suppliers from providing information
 - Significant time and effort to compile necessary (a)(1) data does not constitute infeasibility

Policy WR P1:

Overall Consistency with Coequal Goals – GP 1 (b)(1)

- Staff Analysis
 - Department fails to identify where consistency was not feasible
 - Therefore, Council does not need to consider whether the project is consistent overall



Policy ER P1:

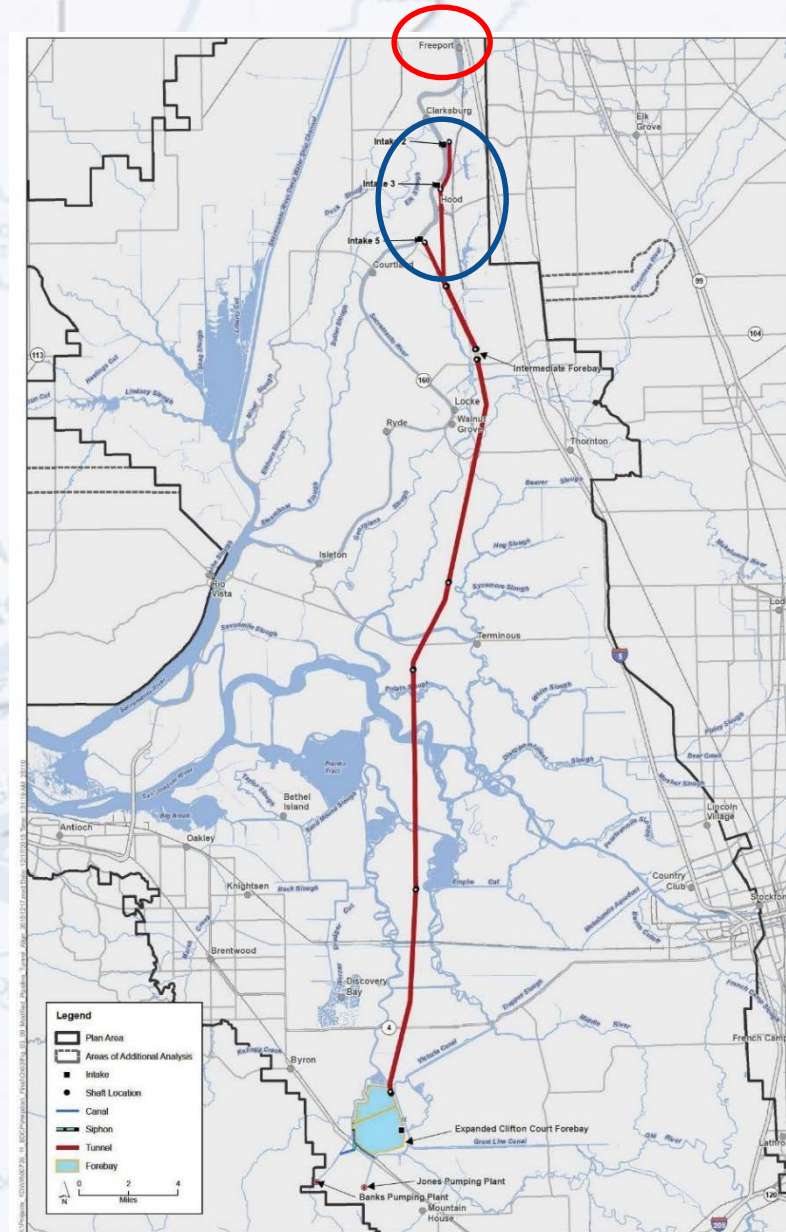
Delta Flow Objectives

- Policy requires demonstration of consistency with current flow objectives as described by Decision 1641
- Department's Finding: *Consistent*
 - Evidence includes modeling and historical record of compliance
- Key Appeal Issues
 - Modeling and planned operations
 - Export/Inflow ratio requirement (location, calculation)
 - Rio Vista flow, DCC, model downscaling, levee failure
 - Historical record of compliance
 - Calculation includes periods of permitted relaxed standards
 - Compliance rate calculated by combining locations and years

Policy ER P1:

Delta Flow Objectives

- Staff Analysis: Modeling and Planned Operations
 - Export/Inflow compliance calculation different than specified in D-1641
 - Location of inflow measurement
 - Calculation of exports
- Department provides substantial evidence supporting its findings on other modeling/operations matters



Policy ER P1:

Delta Flow Objectives

- Staff Analysis: Historical Record
 - Calculation includes periods of permitted relaxed standards
 - Reported compliance rate does not reflect days in compliance
 - Evidence does not support claim to avoid modeled exceedances using real-time operations
- **Conclusion:** *Department fails to demonstrate substantial evidence in record to support findings*

Policy DP P2:

Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

- Policy requires that water management facilities must be sited to avoid or reduce conflicts with existing uses and city/county general plans when feasible, considering comments from local agencies and the Delta Protection Commission
- Department's Finding: *Consistent*
- Key Appeal Issues:
 - Six parties appealed: NCRA, SCDA, North Delta Cares, Regional San, San Joaquin County, Sacramento County
 - Appeals identify 11 issues related to Certification of Consistency

Policy DP P2:

Distinctions between CEQA and DP P2

- CEQA requirements
 - State agencies are not normally subject to local land use regulations
 - A land use conflict is not necessarily an environmental impact
 - Social/economic impacts must have significant physical effects
 - Requires mitigation of significant environmental impacts to extent feasible
 - Significant and unavoidable impacts may remain after mitigation

Policy DP P2:

Distinctions between CEQA and DP P2

- DP P2 requirements
 - Delta Plan regulations apply to State and local agencies
 - Applies to siting water management facilities, ecosystem restoration, and flood management infrastructure
 - Requires siting to avoid or reduce land use conflicts when feasible
 - Substantial evidence – is avoidance/reduction feasible or infeasible?
 - Respecting local land use
 - Enhances protection of Delta uses and legacy communities from land use conflicts
 - Record must reflect that comments from local agencies and Commission to project proponents were considered
- These distinctions acknowledged by Department and Commission

Policy DP P2:

Staff Analysis: Policy DP P2 Conflicts Raised by Appeals

Substantial
Evidence
Supports
Department's
Certification?

(a)	Local land use plans	No
(b)	Existing Delta communities	No
(c)	Existing uses - cultural and historical resources	No
(d)	Existing uses - parks and recreation	No
(e)	Existing uses - impacts on visual and aesthetic character	Yes
(f)	Existing uses - public health and hazards	Yes
(g)	Existing uses - impacts on wastewater discharge facilities	Yes
(h)	Existing uses - traffic impacts	No
(i)	Existing uses - impacts on agriculture	Yes
(j)	Existing uses – noise impacts	No
(k)	Consideration of comments from reclamation districts	Yes

Policy DP P2:

Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

- Record **supports** the Department for issues raised by Appellants on conflicts with agricultural land use
 - Evidence shows how mitigation measures and commitments reduce or avoid conflicts with agricultural uses:
 - Reduction of overall footprint of the project through refinements
 - For agricultural conflicts that are unavoidable, Agricultural Land Stewardship Plans (ALSPs) will be developed with land owners and other local/regional interests to further reduce or avoid conflicts
 - If ALSPs with land owners and other local/regional interests cannot be reached, then use traditional 1:1 mitigation through agricultural conservation easements
- Contrast with findings regarding socioeconomic impacts of lost agricultural production on Delta communities

Policy DP P2:

Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

- Record **does not** support Department's finding of consistency with DP P2 for non-CEQA conflicts
- For CEQA impacts, record **does not** show how the project reduces or avoids land use conflicts when feasible for:
 - Local land use plans
 - Existing Delta communities
 - Existing cultural and historical resources
 - Existing uses – noise impacts
 - Existing uses – parks and recreation
 - Existing uses – traffic impacts
- **Overall Conclusion:** *Department fails to demonstrate substantial evidence in record to support findings*

Policy G P(1)(b)(1): Detailed Findings – Overall Consistency

- Policy requires that a covered action be consistent with each Delta Plan policy it implicates
 - Recognizes that in some cases full consistency with all policies may not be feasible
 - In those cases, project proponent may nevertheless determine that covered action is consistent with coequal goals, but must identify areas where consistency is infeasible
- Department's certification asserts infeasibility as alternative approach to consistency for numerous policies
 - At October 25, 2018 hearing – Department clarified intent to invoke G P1(b)(1) for Policies DP P1 and WR P1

Policy G P(1)(b)(1): Detailed Findings – Overall Consistency

- Staff Analysis
 - No appeal has asserted inconsistency with Policy DP P1, so not applicable
 - As stated previously for Policy WR P1 – record does not support a finding of infeasibility
- **Conclusion:** *Department fails to demonstrate substantial evidence in record to support findings*

Staff Conclusion

- The Department fails to demonstrate consistency with aspects of:
 - Policy **G P(1)(b)(3)** – Detailed Findings: Best Available Science
 - Policy **WR P1** – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance
 - Policy **ER P1** – Delta Flow Objectives
 - Policy **DP P2** – Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats
 - Policy **G P(1)(b)(1)** – Detailed Findings: Overall Consistency

Staff Recommendation

- Staff recommends that the Council remand the matter to the Department for reconsideration, pursuant to Water Code section 85225.23

A detailed map of the Suisun Bay area, showing various islands, tracts, and waterways. The map includes labels for the North Bay Aqueduct, Barker Slough Pumping Plant, Hastings Tract, Prospect Island, River Island, Grand Island, Andrew Island, Tyler Island, New Hope Tract, Canal Ranch Tract, Brack Tract, Brannan Island, Madford Island, West Tract, Venetia Island, Empress Tract, King Island, Bishop Tract, Sherman Island, Jersey Island, Bethel Tract, Hotchkiss Tract, Holland Island, Veale Tract, Palm Tract, Orwood Tract, Wood Tract, Victoria Island, Discovery Bay, Barton Tract, Contra Costa Canal, Mokelumne River, Mokelumne Aqueduct, Suisun Bay, Honker Bay, Wheeler Island, Dutton Island, San Joaquin River, and various other islands and tracts. The text "Questions and Discussion" is overlaid in the center of the map.

Questions and Discussion