

## Delta Counties Coalition

Contra Costa County | Sacramento County | San Joaquin County | Solano County | Yolo County  
*"Working together on water and Delta issues."*

December 3, 2024

Chair Ortega and Members of the Board  
Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, California 90054-0153

**Re: Item 8-4 Consider Entering into Amended Agreement with Department of Water Resources for Delta Conveyance Project Preconstruction Work (2026-2027)**

### **Delta Counties Coalition Urges No Funding for Additional Planning Costs of Delta Conveyance Project**

Dear Chair Ortega and Members of the Board:

The Delta Counties Coalition (DCC)<sup>1</sup> urges Metropolitan Water District (MWD) to reject the Department of Water Resources' (DWR) request to pay MWD's 47.2-percent share of the \$300 million in planning costs for 2026-2027 of \$141.6 million for the controversial Delta Conveyance Project (DCP or Delta Tunnel). This additional increment of planning costs is in addition to \$300 million (or more) already spent and would require a three percent rate increase.

The Delta Tunnel would have negative impacts on our communities and will wreak havoc on both the aquatic and terrestrial environment, further endangering fish and wildlife. Short-term construction and long-term operation effects would also irreparably harm the Delta's remarkable recreational opportunities. These impacts would devastate the Delta and its residents.

MWD Board members are likely most concerned with their own member agency rates and water supply reliability. Even though nearly four years have passed since the announcement of the Governor's "new plan" to build two intakes and one massive tunnel, alternatives (many of which would be cheaper) have not been explored. Notably, all nine alternatives analyzed in the environmental impact report certified in 2023 analyzed some version of a tunnel. The millions in additional requested expenditures would do nothing to further inform Board members about the alternatives to building a controversial tunnel around the Delta.

MWD Board members' questions regarding the costs and benefits of the Delta Tunnel in comparison to other alternatives have not been answered. In particular, the value to MWD of levee modernization (among other actions) has not been analyzed. In answer to Board member questions in October 2024 on the possibility of using funds for levees instead, the staff failed to acknowledge the benefits of levee upgrades to water supply reliability (e.g., floods, earthquakes and sea level rise), or the rapid progress on decreasing costs of brackish water treatment that

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<sup>1</sup> For more information about the DCC, see: <https://savethedelta.saccounty.gov/Pages/OurCoalition.aspx>.

December 3, 2024

-2-

could be implemented at the existing diversions.<sup>2</sup> Despite Board members' good questions, there has been no detailed consideration of these and other actions that the State Water Project (SWP) could take to secure future water supplies from the Delta. Nor has your staff provided such information in response to your questions.

Instead, the Board has been told that the Delta Tunnel is the way to regain about two thirds of the water supply that would otherwise be lost. This assertion relies on the Benefit-Cost Analysis<sup>3</sup> undertaken by the Berkley Research Group in May 2024. Critically, just like the Delta Tunnel's environmental documents, the 2024 BCA analysis does not consider any other alternatives. As you heard from Dr. Jeff Michael in June 2024, the benefit-cost ratio is also inflated and unreliable, and fails to substantiate its conclusion that the DCP is a good investment.<sup>4</sup>

Instead, the Benefit-Costs Analysis "is based on a series of unjustified, optimistic assumptions that compound into a grossly inflated valuation of benefits." Among other defects, it: (1) inflates urban water supply values by assuming extreme demand growth, including 2.8 million new households on single-family lots by 2045 in the MWD service area; (2) unrealistically assumes a 100 year project lifespan while assuming that alternative water supply projects would need to pay for themselves in shorter time periods; (3) ignores large sources of project risk, such as cost escalation, lower water demand, endangered species regulation, lifespan and interest rates; and (4) fails to account for project costs on salmon and other threatened and endangered fish<sup>5</sup> species.

Your staff has also failed to level with you regarding the permit and finance status of the Delta Tunnel, which is not anywhere near complete. As shown in the attached Permit Status Table, state environmental review is the only completed process, and that is currently in litigation. In addition, DWR has failed to secure bonds to fund the project,<sup>6</sup> thus requiring continued investments by SWP member agencies to continue this lengthy planning process.

DWR's attempts to obtain a change in water rights that allow operation of new diversions in the North Delta has also been fraught with controversy. With two new diversions totaling 6,000 cfs proposed to be placed upstream of 3,000 other diverters, including major municipal, industrial and agricultural uses, the proceeding has garnered a high degree of attention, with 40 water rights protests filed earlier in 2024.

DWR has also failed to extend the time period within which to construct and make beneficial use of water supplied from the Delta to the SWP under its existing permits and has withdrawn its 2009 Petitions for Extension of Time that might have corrected this deficiency. The existing deadline in DWR's permits for completion of construction is December 31, 2000, and the deadline to achieve full beneficial use is December 31, 2009. On November 18, 2024, the Administrative Hearing Officer determined that:

Additional information about the Petitioner's diversion and beneficial use under the SWP Permits is necessary for the Board to determine the portion of the SWP

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<sup>2</sup> <https://www.nawihub.org/about/>

<sup>3</sup> [https://water.ca.gov/-](https://water.ca.gov/-/media/DWR%20Website/Web%20Pages/Programs/Delta%20Conveyance/Public%20Information/DCP%20Benefit-Cost%20Analysis%202024-05-13__ADA.pdf)

[/media/DWR%20Website/Web%20Pages/Programs/Delta%20Conveyance/Public%20Information/DCP%20Benefit-Cost%20Analysis%202024-05-13\\_\\_ADA.pdf](https://water.ca.gov/-/media/DWR%20Website/Web%20Pages/Programs/Delta%20Conveyance/Public%20Information/DCP%20Benefit-Cost%20Analysis%202024-05-13__ADA.pdf)

<sup>4</sup> <https://valleyecon.blogspot.com/>

<sup>5</sup> <https://www.pacificcbpr.org/wp-content/uploads/2024/06/DCP-BCA-review-062424.pdf>

<sup>6</sup> <https://somalaw.com/policy-alert/delta-conveyance-project-faces-stronger-headwinds-with-court-ruling-rejecting-financing-scheme-and-new-environmental-litigation/>

December 3, 2024

-3-

Permits that the Petitioner has perfected and the portion that remains unperfected and contingent upon future-filed petitions for extension of time or other action by the Board (such as a licensing or revocation proceeding).<sup>7</sup>

At the most recent pre-hearing conference, DWR could not identify the pre-2009 maximum diversion and use of water under the SWP Permits. To the extent that the rationale for the Delta Tunnel relies on the exercise of any rights that have not been perfected through water use at the existing SWP diversions, new water rights may be necessary. MWD should not assume the DCP can increase diversions in winter months, for instance, above what has been diverted from the existing SWP diversions.

In summary, our counties will never accept a project that deprives the area of origin protections promised when the SWP was authorized; our local communities also depend on reliable water supplies and a healthy environment. The Delta Tunnel would burden our infrastructure and communities with over a decade of unbearable construction, and ultimately increase water salinity and harmful algal blooms, in addition to causing the Sacramento River to flow backwards at times.

There are opportunities to work together. Our agencies have jointly requested, for instance, continued funding of critical levee infrastructure in the Delta. The levee system in the Delta and the Central Valley more generally, protects statewide important infrastructure

We urge that instead of throwing more funds into the Delta Tunnel, MWD work with the DCC to find ways to strengthen levees, repair existing infrastructure, protect Delta water quality, recharge groundwater, and improve regional self-reliance across the state to strengthen California's water supply system. A vote for additional Delta Tunnel spending means significant rate and property tax increases in your service areas without certain returns. Such a decision also disregards environmental and economic impacts to the Delta, engenders more conflict, and would move the state farther away from effective solutions to meet California's future water needs. We ask that MWD and its member agencies instead join the DCC in pursuing shared solutions that both enhance the Delta and improve water supplies for MWD's member service areas.

Sincerely,



Patrick Hume, Supervisor  
Sacramento County



Oscar Villegas, Supervisor  
Yolo County



Ken Carlson, Supervisor  
Contra Costa County



Mitch Mashburn, Supervisor  
Solano County



Tom Patti, Supervisor  
San Joaquin County

Attachments:

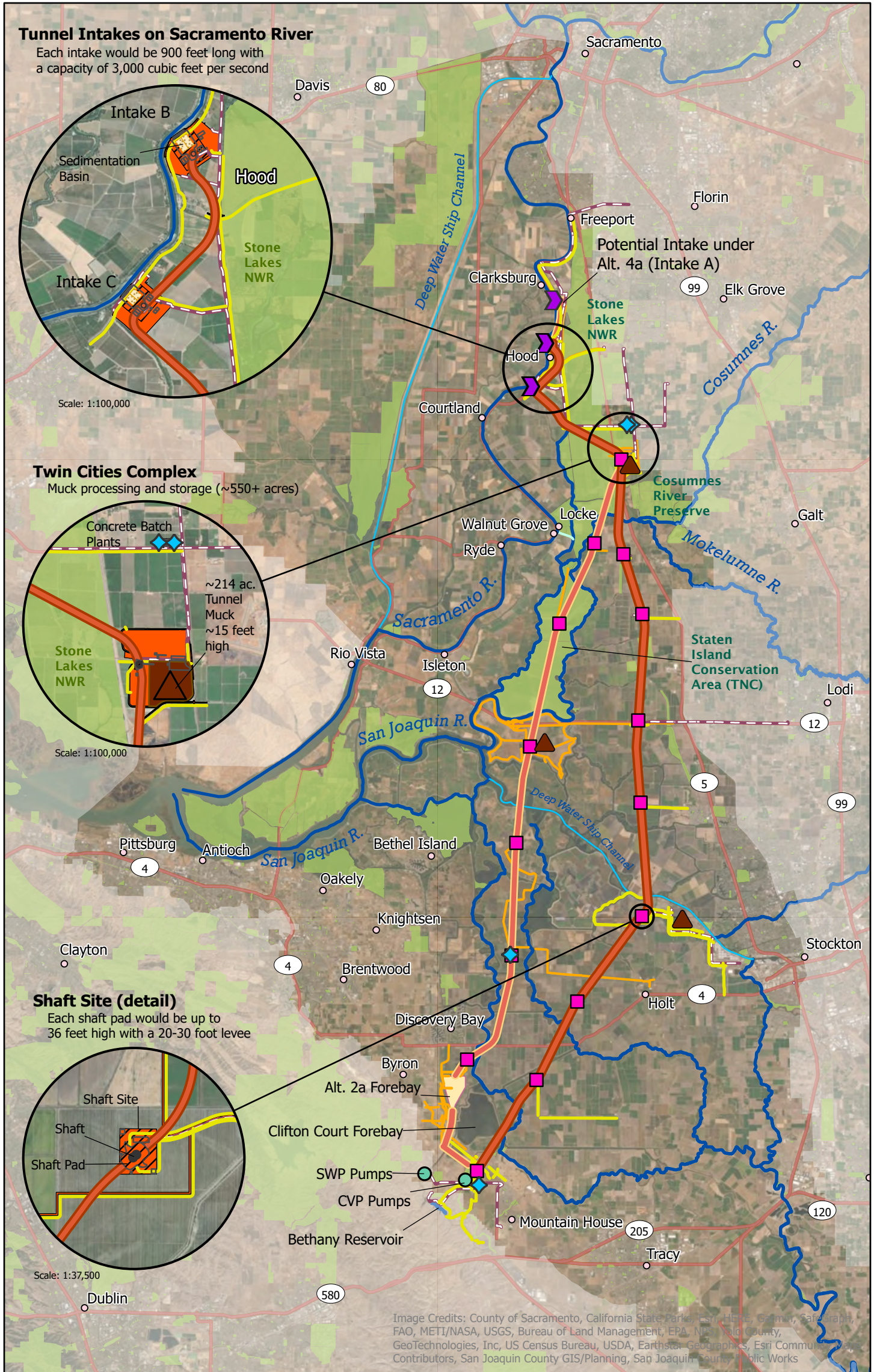
Delta Tunnel Impacts Map  
DCP Review, Permitting, Finance and Property Rights Status Table

<sup>7</sup>

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2024/2024-11-18-dcp-amended-hearing-notice.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2024/2024-11-18-dcp-amended-hearing-notice.pdf)

# DWR Tunnel Impacts on the California Delta

Proposed (2022)



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Permanent Impact	Major Rivers	Tunnel Muck Site	<b>Alternative 5 / Bethany</b> (Proposed Project)	<b>Alternative 2a / Central</b>
Work Area	Deep Water Ship Channel	Shaft Site	Tunnel (45 mi. long, 39' outer diameter)	Tunnel (42 mil. long, 44' outer diameter)
Parks and Public Lands	Delta Cross Channel	Intake Site	Roads and Connections	Roads and Connections
	Highways	Concrete Batch Plant		
	New Utilities	Shaft		

Scale: 1:350,000

0 2.5 5 10 Miles

Projection: State Plane Zone III NAD83 Feet

Prepared Sep 2022 by Valley Spatial  
 Locations Approximate  
 Project Components: DWR (2022)  
 State Lands: gis.data.ca.gov (2019)

## Delta Conveyance Project – Review, Permitting, Finance and Property Rights

Status: **MOSTLY INCOMPLETE X**

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Environmental Review</b>				
<b>CEQA</b> <i>Department of Water Resources</i>	Draft EIR circulated for public review July 27, 2022.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Final EIR released December 8, 2023; Certification and Notice of Determination filed December 21, 2023.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Litigation commenced January 2024; trial court consolidated 10 actions in October 2024.
<b>NEPA</b> <i>U.S. Army Corps of Engineers</i>	Draft EIS Analyzing Construction of Tunnel circulated for public review December 16, 2022.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does not analyze operation impacts of DCP.
	Final EIS Analyzing Construction of Tunnel.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No Record of Decision.
<i>U.S. Bureau of Reclamation</i>	Draft EIS Analyzing Long-Term Operations of the Central Valley Project and State Water Project July 26, 2024.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Very coarse programmatic operations assessment of DCP in appendix.
	Final EIS Analyzing Long-Term Operations of the Central Valley Project and State Water Project November 15, 2024.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No Record of Decision.
<b>Other Processes</b>				
<b>Federal Endangered Species Act, Section 7, Biological Opinion</b> <i>U.S. Fish and Wildlife Service; National Marine Fisheries Service</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Draft Biological Assessment pending.
<b>California Endangered Species Act, Section 2081, Incidental Take Permit</b> <i>California Department of Fish and Wildlife</i>	Incidental Take Permit application submitted April 9, 2024.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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Status: **MOSTLY INCOMPLETE X**

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Other Processes (cont.)</b>				
<b>California Fish and Game Code, Section 1602, Lake and Streambed Alteration Agreement</b> <i>California Department of Fish and Wildlife</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	It appears this process has not begun.
<b>Clean Water Act, Section 404</b> <i>U.S. Army Corps of Engineers</i>	Amended application submitted July 7, 2022.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Rivers and Harbors Act, Section 10</b> <i>U.S. Army Corps of Engineers</i>	Amended application submitted July 7, 2022.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Rivers and Harbors Act, Section 14, 33 USC Section 408</b> <i>U.S. Army Corps of Engineers</i>	Central Valley Flood Protection Board Statement of No Objection submitted May 22, 2020.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>National Historic Preservation Act, Section 106, Programmatic Agreement</b> <i>U.S. Army Corps of Engineers</i>	Revised draft circulated to consulting parties January 27, 2023.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Programmatic Agreement under development.
<b>Change in Point of Diversion</b> <i>State Water Resources Control Board</i>	DWR Change in Point of Diversion Petition submitted February 22, 2024; Notice of Public Hearing issued July 31, 2024.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	40 protests to DWR's Petition filed. Date to commence hearing process pending.
<b>Extension of Time to Construct and Put to Beneficial Use</b> <i>State Water Resources Control Board</i>	DWR Petition for Extension of Time filed in December 2009, withdrawn in August 2024. DWR "change request" submitted August 22, 2024, seeks to modify Term 6 to provide 55-year extension of time to complete construction (to December 31, 2055), without altering 2009 deadline for beneficial use. DWR acknowledges that new points of diversion for DCP would be limited by maximum historical diversions from its existing Delta diversions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Due Diligence litigation on DWR's 2009 Extension Petition and related protests commenced May 2024. In the Water Board hearing, Protestants oppose DWR's 2024 "change request" and dispute that it is "minor."

## Delta Conveyance Project – Review, Permitting, Finance and Property Rights

Status: **MOSTLY INCOMPLETE** ❌

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Other Processes (cont.)</b>				
<b>Clean Water Act, Section 401, and Porter-Cologne Act, California Water Code, Section 13000 et. seq., Water Quality Certification and Waste Discharge Requirements</b> <i>State Water Resources Control Board</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	It appears this process has not begun.
<b>Wetland Riparian Area Protection Policy</b> <i>State Water Resources Control Board</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	It appears this process has not begun.
<b>Consistency of 2024-2026 Proposed Geotechnical Activities with Delta Plan</b> <i>Delta Stewardship Council</i>	Consistency Certification for limited geotechnical activities submitted to Delta Stewardship Council October 8, 2024; four appeals filed November 8, 2024.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Trial court enjoined geotechnical activities pending Consistency Certification for DCP May 2024; DWR appeal filed August 2024. DWR attempts to stay the injunction were unsuccessful.
<b>Consistency of Delta Conveyance Project with Delta Plan</b> <i>Delta Stewardship Council</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	“Early consultation” ongoing.
<b>Finance</b>				
<b>Revenue Bond Financing</b> <i>Department of Water Resources</i>	Bond Resolutions issued and DWR Validation Action filed in August 2020; seven answers were filed; trial court judgment against DWR and Supporting Water Contractors January 2024, concluding that the Bond Resolutions exceeded DWR’s authority.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DWR and other appeals filed February 2024.

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Status: **MOSTLY INCOMPLETE X**

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Finance (cont.)</b>				
<b>Contractor Financing Commitments</b> <i>State Water Contractors</i>	DWR is in the process of obtaining an additional \$300 million funds for DCP planning and permitting costs.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	It is estimated that less than half of the necessary planning funds have been committed.
<b>Property Access and Acquisition</b>				
<b>Access for Geotechnical and Environmental Investigations</b> <i>Department of Water Resources</i>	Since 2009, DWR has commenced over 200 Temporary Entry Permit cases which, in 2010, were coordinated for litigation in San Joaquin County (JCCP 4594), in order to advance the BDCP, WaterFix, and, now, the DCP.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DWR continues to file “add-on” entry cases, most of which are contested by Delta landowners, in JCCP 4594.
<b>Acquisition/Eminent Domain for Construction</b> <i>Department of Water Resources</i>	Hundreds of private property interests would be necessary for construction of the DCP. The EIR estimates 1,277 acres are needed for permanent use and 1,390 acres are needed for temporary use—a total of 2,667 acres.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Currently DWR does not own any land needed for the DCP. Separate eminent domain lawsuits will likely need to be filed and litigated to obtain property for DCP.

For more information on the Delta Conveyance Project’s environmental compliance and permitting processes, visit <https://www.deltaconveyanceproject.com/planning-processes>. Other permits, including local permits and those related to construction, may also be needed.