

## Delta Counties Coalition

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

January 9, 2025

Chair and Members of the Board  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
[Board@valleywater.org](mailto:Board@valleywater.org)

**Re: Item 3.5, January 14, 2025, Consider Entering into Amended Agreement with Department of Water Resources for Delta Conveyance Project Planning and Design Work**

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

Dear Chair Estremera and Members of the Board:

The Delta Counties Coalition (DCC)<sup>1</sup> urges Santa Clara Valley Water District (Valley Water) to reject the Department of Water Resources' (DWR) request to pay \$9.69 million in planning costs for 2026-2027 of \$141.6 million for the Delta Conveyance Project (DCP or Delta Tunnel). This additional increment of planning costs is in addition to the millions already spent by Valley Water will not yield the claimed benefits to Valley Water and is far riskier than acknowledged by DWR.

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, who are our constituents and your neighbors, as shown in the attached map.<sup>2</sup> These community impacts were not meaningfully addressed in the Stakeholder Engagement Committee process, and the Community Benefit Fund will not offset these impacts on our communities, contrary to Valley Water's Guiding Principles for Participation referenced in the presentation for this item.

Anticipated Valley Water rate increases from the current funding request (\$0.61 to \$1.01 per month), let alone the full project cost, are not justified by the project's uncertain 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 that 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. Likewise, the unfinished environmental impact statement required under federal law (and glossed over in the agenda materials) only contains tunnel project alternatives.

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

<sup>2</sup> Available at: <https://savethedelta.saccounty.gov/Documents/TunnellImpactsMap.pdf>.

DWR's 2024 Benefit-Cost Analysis fails to consider any other alternatives to a Tunnel to meet State Water Project (SWP) needs. As explained by Dr. Jeff Michael in June 2024, the benefit-cost ratio is inflated and unreliable, and fails to substantiate DWR's claim that the DCP is a good investment.<sup>3</sup> Instead, the Benefit-Cost 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 large demand growth; (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>4</sup> species.

Valley Water should also be aware that the permit and finance status of the Delta Tunnel is not anywhere near complete. The claims of an "Important, Successful Year" in DWR's presentation are overstated and the clipped headlines appear to be generated by DWR and its consultants. As shown in the attached Permit Status Table,<sup>5</sup> state environmental review is the only completed process, and that is currently in litigation. After hundreds of millions in investment by SWP member agencies and the state and federal governments, the proposed megaproject facilities are only at 2-10 percent design, and DWR is currently enjoined from conducting geotechnical investigations. 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. Also, contrary to the Schedule to Complete Key Permits provided in the DWR presentation for this meeting, neither the state or federal endangered species permitting is complete.

DWR's attempts to obtain a change in water rights that allow operation of new diversions in the North Delta is also fraught with controversy. The DCP's two new massive diversions totaling 6,000 cfs are proposed to be placed on the Sacramento River, just south of the City of Sacramento and upstream of 3,000 other diverters, including major municipal, industrial and agricultural uses. The water rights proceeding has garnered a high degree of attention, with 40 water rights protests representing dozens of groups, agencies, tribes and individuals were filed earlier in 2024.

During the time DWR has been pursuing isolated Delta conveyance, DWR failed to extend the time to construct and make beneficial use of water supplied from the Delta to the SWP under its existing permits. The deadline in DWR's permits for completion of construction was December 31, 2000, and the deadline to achieve full beneficial use was December 31, 2009, yet DWR's 2009 Petitions for Extension of Time was withdrawn in the Summer of 2024. As a result of these irregularities, on November 18, 2024, the SWRCB's Administrative Hearing Officer in the DCP water rights proceeding 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 Permits that the Petitioner has perfected and the portion that remains unperfected

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<sup>3</sup> <https://valleyecon.blogspot.com/>

<sup>4</sup> <https://www.pacificcbpr.org/wp-content/uploads/2024/06/DCP-BCA-review-062424.pdf>

<sup>5</sup> [https://savethedelta.saccounty.gov/Documents/DCP\\_StatusChart.pdf](https://savethedelta.saccounty.gov/Documents/DCP_StatusChart.pdf)

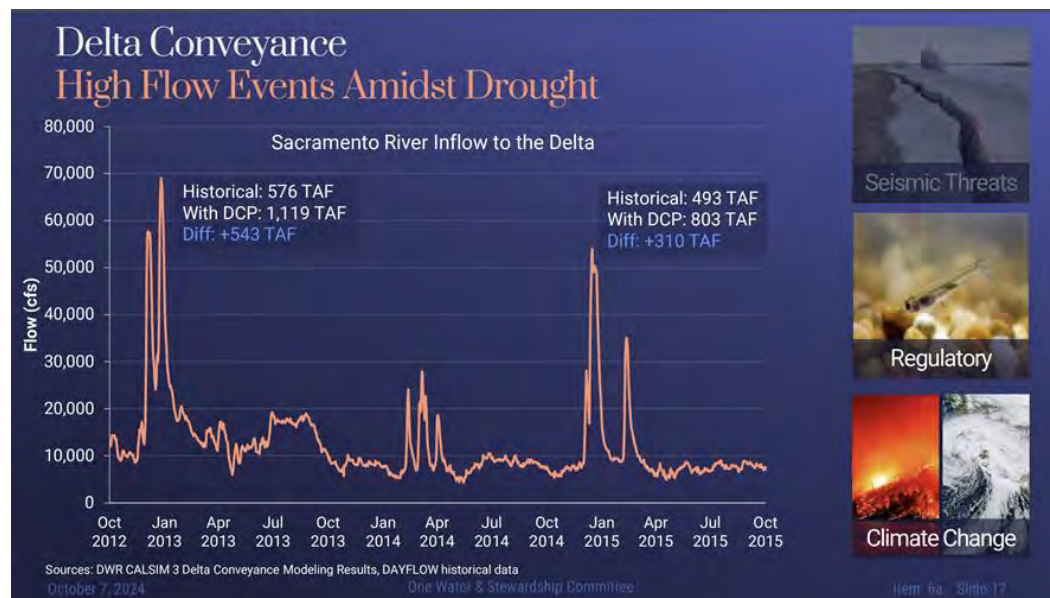
<sup>6</sup> <https://somalaw.com/policy-alert/delta-conveyance-project-faces-stronger-headwinds-with-court-ruling-rejecting-financing-scheme-and-new-environmental-litigation/>

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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>

DWR has not yet identified the pre-2009 maximum diversion and use of water under the SWP Permits, which calls into question DWR's claims that the DCP would be permitted to take more water than was historically used, and in different months, as shown in the figure below.<sup>8</sup>



Valley Water should not assume the DCP can increase diversions in winter months, for instance, above what has been diverted from the existing SWP diversions in the past, as is shown in the DCP Operations Plan<sup>9</sup> and environmental impact report.<sup>10</sup> To the extent that the Delta Tunnel would rely on the exercise of rights that have not yet been perfected to divert “additional flows”, new water rights may be necessary. Such a water rights proceeding has not yet commenced.

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, rather than foisting burdens on Delta communities in exchange for a perceived benefit to Valley Water. The Delta counties and Santa Clara County share similar risks from climate change and sea level rise. A Valley Water factsheet explains that

<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)

<sup>8</sup> MWD One Water Committee, October 7, 2024, Item 6a, slide 17, citing DWR CALSIM 3 Delta Conveyance Modeling Results, DAYFLOW historical data, available at:

<https://mwdh2o.legistar.com/View.ashx?M=F&ID=13349445&GUID=A997325E-6E59-4E4E-92E1-BD31CD990E9C>

<sup>9</sup> [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP-Operations-Plan\\_Final.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP-Operations-Plan_Final.pdf), p. 9, stating that the DCP will be used to capture “additional flows” up to the 10,350 cfs limit in its permits.

<sup>10</sup> DWR's modeling states the DCP (Alternative 5) would increase annual State Water Project deliveries by 16% above the no action alternative. (<https://cadwr.app.box.com/s/oif17etxd37f6w2m51csky6zuybvfy2m>), Volume 1, Chapter 6A, Page 6A-3, Table 6A-1.

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in “unprotected areas and areas where the levees overtop or fail due to very high sea level rise (and/or coastal storm events), flooding can impact Santa Clara County communities and businesses and may pose a risk to Valley Water infrastructures.” As a result, continued funding of critical levee infrastructure in the entire Bay Area region that protects statewide important infrastructure is a shared goal. These investments also protect against damage from earthquakes, should they occur. Agencies reliant on water imports need to also address maintenance needs to existing pumping and conveyance infrastructure, which has been neglected in favor of the DCP and its predecessor projects.

We urge Valley Water to work with Delta counties and other stakeholders 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 instead of throwing more funds into the Delta Tunnel. A vote for additional Delta Tunnel spending means rate and property tax increases in your district without certain returns. Such a decision disregards environmental and economic impacts to your neighbors in 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 Valley Water instead join the DCC on shared solutions that both enhance the Delta and improve water supplies for Valley Water.

Sincerely,



Patrick Hume, Supervisor  
Sacramento County



Oscar Villegas, Supervisor  
Yolo County



Ken Carlson, Supervisor  
Contra Costa County



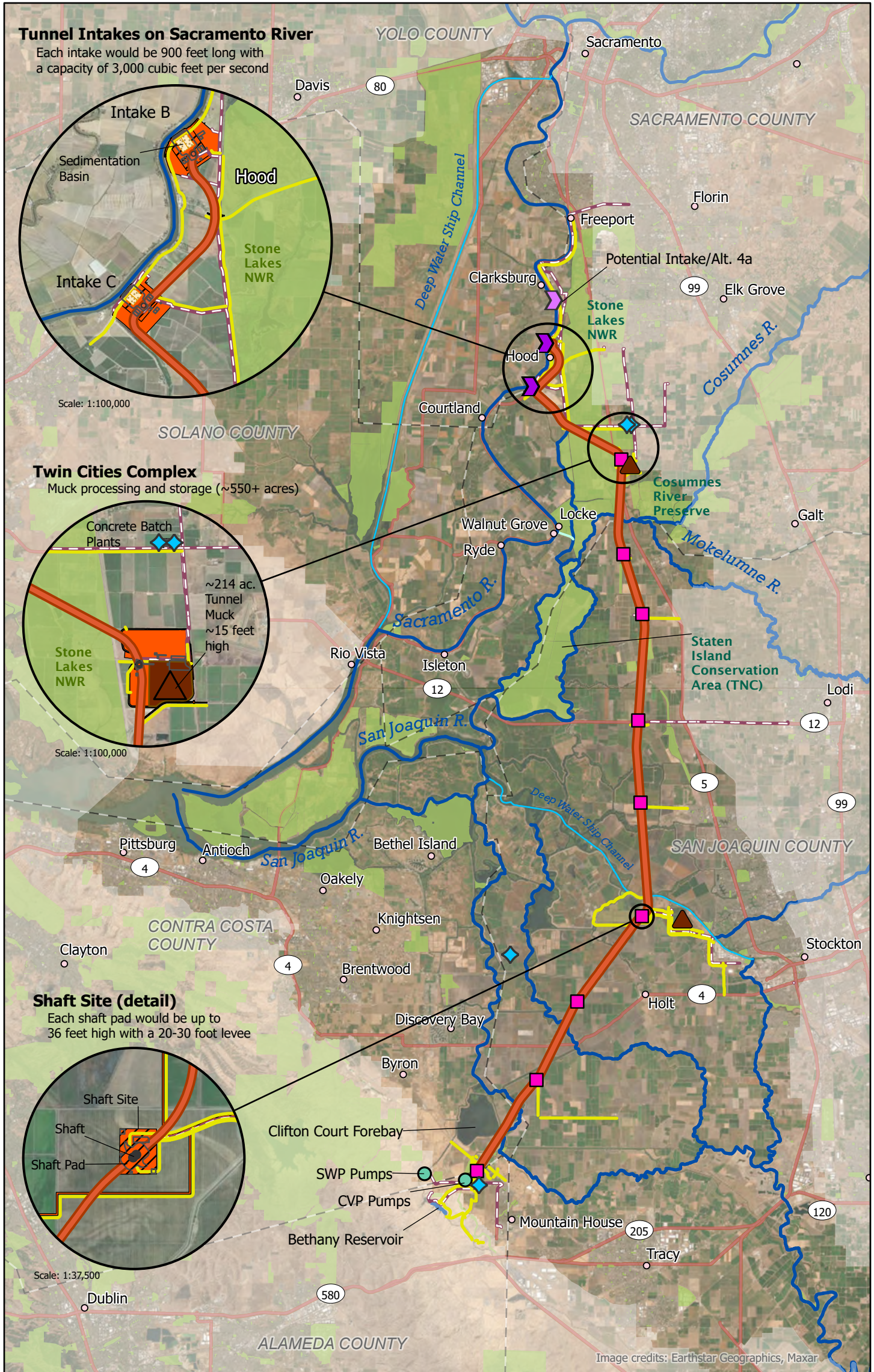
Mitch Mashburn, Supervisor  
Solano County



Steven Ding, Supervisor  
San Joaquin County

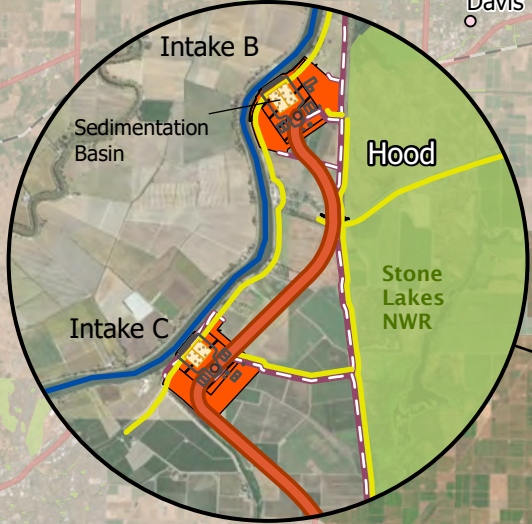
Attachments: Delta Tunnel Impacts Map  
DCP Review, Permitting, Finance and Property Rights Status Table

# DWR Tunnel Impacts on the California Delta



## Tunnel Intakes on Sacramento River

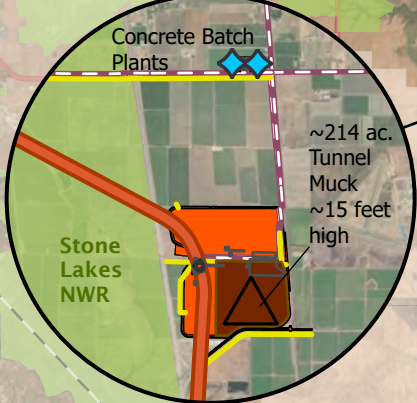
Each intake would be 900 feet long with a capacity of 3,000 cubic feet per second



Scale: 1:100,000

## Twin Cities Complex

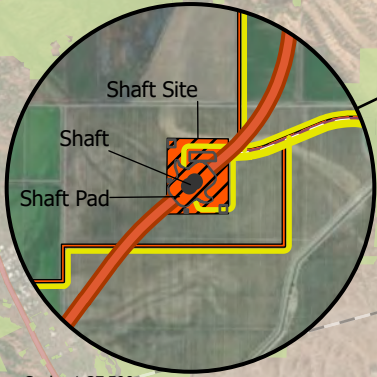
Muck processing and storage (~550+ acres)



Scale: 1:100,000

## Shaft Site (detail)

Each shaft pad would be up to 36 feet high with a 20-30 foot levee



Scale: 1:37,500

Permanent Impact

Work Area

Parks and Public Lands

County Boundary

Scale: 1:350,000

Major Rivers

Deep Water Ship Channel

Delta Cross Channel

Highways

New Utilities

Miles

Projection: State Plane Zone III NAD83 Feet

Tunnel Muck Site

Shaft Site

Intake Site

Potential Intake Site

Concrete Batch Plant

Shaft

## Alternative 5 / Bethany

(Adopted Project)

Tunnel (45 mi. long, 39' outer diameter)

Roads and Connections

Prepared Mar 2024 by Valley Spatial Locations Approximate

Project Components: DWR (2023)

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>	USACE submitted draft Biological Assessments to the federal fisheries agencies in May 2024.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<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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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; Amended Notice of Public Hearing issued November 18, 2024.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	40 protests to DWR's Petition filed. Hearing process currently scheduled to commence in February 2025, with DWR's case in chief due in March 2025. New points of diversion for DCP would be limited by maximum historical diversions from existing Delta diversions as of December 2009.

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Status: **MOSTLY INCOMPLETE X**

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Other Processes (cont.)</b>				
<b>Extension of Time to Construct and Put Water 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. The time period for the DWR to perfect beneficial use of its water rights under the SWP Permits has expired. DWR submitted a “change request” to the SWRCB Division of Water Rights on August 22, 2024, seeking to modify Term 6 to retroactively provide 55-year extension of time to complete construction (to December 31, 2055); the Administrative Hearing Officer has recommended that the request be rejected.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Due Diligence litigation on DWR’s 2009 Extension Petition and related protests commenced April 2024.
<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. Appeal hearings are scheduled for December 19, 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.



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

Status: **MOSTLY INCOMPLETE X**

PERMIT/MILESTONE	ACTIONS	STATUS		OTHER NOTES
		COMPLETE	INCOMPLETE	
<b>Finance</b>				
<b>Consistency of Delta Conveyance Project with Delta Plan</b> <i>Delta Stewardship Council</i>	“Early consultation” ongoing.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<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.
<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.

Delta Counties Coalition  
savethedelta.saccounty.gov  
Updated December 2024