

Issues with the CA WaterFix

The following lists the Delta Plan policies that the California WaterFix failed to meet.

(In other words, the answer to “should it be Certified consistent with the Delta Plan?” is “No” according to the Delta Stewardship Council Staff.) Excerpts from *18-11-8 DSC Workshop Staff Report- Agenda Item 1- Appeals of the Certification of Consistency for WaterFix C20185*.

“The Department” refers to the Department of Water Resource, “Appellants” refers to STCDA and others who testified against WaterFix.

G P1 (b)(3) (23 CCR section 5002(b)(3))

Detailed Findings to Establish Consistency with the Delta Plan (Best Available Science) **No**

G P1 (b)(3) Summary: The Department fails to demonstrate substantial evidence in the record to support its findings that California WaterFix is consistent with the Delta Plan’s Best Available Science timeliness criterion. Substantial evidence in the record demonstrates that updated climate change information was reasonably available to the Department before it released its Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and FEIR/EIS for the project, and the Department has not supported its conclusion in the Certification that such updated information would not have changed its projections, impact analyses, or management decisions.

WR P1 (23 CCR section 5003)

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

No

WR P1 Summary: The Department fails to identify substantial, quantitative evidence demonstrating that water suppliers receiving water as a result of the project have adequately contributed to reduced reliance on the Delta through improved regional self-reliance and that this failure did not significantly cause the need for the project.

The Department provides extensive information regarding efforts that certain water suppliers have undertaken to reduce their reliance on the Delta. Appellants argue that California WaterFix must satisfy the specific requirement of subdivision (a)(1) of the policy, including required quantitative data, in order to be consistent.

The Department also states that the need for California WaterFix was not significantly caused by a failure to adequately reduce reliance, but rather by factors that pre-date and exist independently of the reduced reliance policy. Appellants dispute this conclusion, contending that Delta exports resulted in the environmental problems that DWR now maintains are causing the need for California WaterFix.

Finally, the Department states that the export of water will not have a significant adverse environmental impact because the volume of Delta exports would remain about the same or decrease slightly compared to exports under existing conditions. Appellants dispute this by taking issue with the volume of projected exports and the Department’s assertion that no significant change in the amount of water exported will ensure that the project will not have significant adverse environmental impact in the Delta. In its supplemental response to hearing questions, the Department notes that California WaterFix will have a significant adverse environmental impact due to the project’s effect on the earliest stages of American Shad and striped bass.

ER P1 (23 CCR section 5005)

Delta Flow Objectives

No

ER P1 Summary: The Department fails to demonstrate substantial evidence in the record to support its findings that the project is consistent with the Delta Plan with respect to Delta flow objectives. The Certification offers two main sources of evidence: modeling studies and a historical record of compliance. Appellants assert that the Department does not comply with the SWRCB Decision 1641 (D-1641) export/inflow ratio requirement and does not account for relaxation of water quality standards when reporting historic compliance, among other issues. The historical record is meant to show that the Department can use real-time operations to meet water quality standards at a greater rate than suggested by monthly models. However, neither the models nor the historical record demonstrate compliance with SWRCB Decision 1641 (D-1641), which is the applicable Delta flow objective at the time of certification. In addition, the Department's model provides no evidence that California WaterFix would be operated to meet D-1641's export/inflow ratio with the inflow measured at Freeport, as required by D-1641.

DP P2 (23 CCR section 5011)

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

No

DP P2 Summary: The Department fails to demonstrate substantial evidence in the record to support its findings that the project is consistent with respect to compatibility with local land use plans, conflicts with land uses in existing Delta communities, conflicts with existing land uses due to impacts on cultural and historical resources, conflicts with existing Delta parks and recreation uses, traffic impacts, and conflicts with existing land uses due to noise impacts. For many of these issues, the Department finds that the project would result in significant and unavoidable impacts. Such findings may be sufficient for purposes of compliance with the California Environmental Quality Act (CEQA). However, they do not necessarily demonstrate that the Department has reduced the resulting conflicts with existing or planned Delta land uses to the extent feasible, as the Delta Plan requires.

The Department's Certification also acknowledges project impacts to visual and aesthetic resources, public health and hazards, and wastewater discharge facilities. For these issues, the Department identifies substantial evidence in the record showing how the project would avoid or reduce resulting conflicts to the extent feasible. In addition, the Department identifies substantial evidence in the record showing consideration of comments from reclamation districts.

Regarding Delta agricultural land conflicts, appellants fail to demonstrate that the Department's commitments to prepare Agricultural Land Stewardship Plans (ALSPs) and other related commitments are not substantial evidence supporting its certification. Where feasible, these commitments would avoid and reduce conflicts related to agricultural land conversion through working with farmers to continue agricultural production during construction, restoring agricultural land after construction, and offering financial and technical support for best management practices on farms. It should be noted that these measures only reduce and avoid conflicts associated with farmland conversion. They do not address other community land uses or economic conditions in legacy Delta communities that rely on agriculture. On this latter topic, the Department fails to demonstrate substantial evidence in the record to support its findings.

Staff Recommendation

Because the Department failed to demonstrate consistency with aspects of Delta Plan Policy **G P(1)(b)(1)**, Delta Plan Policy **G P(1)(b)(3)**, Delta Plan Policy **WR P1**, Delta Plan Policy **ER P1**, and Delta Plan Policy **DP P2**, staff recommends that the Council remand the matter to the Department for reconsideration, pursuant to Water Code section 85225.23.