

November 15, 2018



Delivered via email: [Randall.Fiorini@deltacouncil.ca.gov](mailto:Randall.Fiorini@deltacouncil.ca.gov)

Mr. Randy Fiorini  
Chair, Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Chair Fiorini:

The State Water Contractors disagree with the Delta Stewardship Council staff Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources (DWR) for California WaterFix (Draft Determination) suggesting that the California WaterFix project be remanded to DWR for further, unspecified changes. California WaterFix is a critical infrastructure project for California's water supply reliability and one of the most exhaustively examined infrastructure projects in state history, given tens of thousands of pages of analysis and more than a million hours of dedicated staff time to advance this Delta infrastructure modernization process. We believe that the staff Draft Determination proposes new unspecified changes that are counter-productive to advancing the coequal goals and improving California's water supply reliability, which impact our economy and are not supported by evidence in the record. Furthermore, as outlined below, we believe DWR certification of consistency was supported by substantial evidence and should be upheld.

**Reduced Delta Reliance:** Council staff states that if water suppliers have not included the information in their 2015 UWMPs and AWMPs in the format set forth in WR P1(c)(1)(A)-(C), then DWR has not provided substantial evidence of consistency with WR P1. (Draft Determination pp. 52:37 – 53:15.) Staff states that this result is required by the plain language of WR P1 and a portion of Appendix G to the Delta Plan. However, the interpretation and application is flawed in two respects: the plain language of WR P1 does not impose that requirement, and Appendix G is guidance, and it would be unlawful for the Council to impose it as an underground regulation on California WaterFix.

Furthermore, DWR's record has provided thousands of pages of water planning evidence that supports DWR's certification that water suppliers that will receive water supply reliability benefits of the California WaterFix are improving their self-reliance, and the separate determination that the need for California WaterFix was not significantly caused by any alleged failure to reduce reliance, but by factors recognized prior to passage of, as well as noted within, the Delta Reform Act itself. These include diminishing reliability of Delta exports due to more restrictive regulations to address declining fish populations, threats to Delta levees, and climate change. The Council should direct staff to rely on the substantial evidence in the administrative record that supports DWR's certification of consistency with WR P1 and deny the appeals on that basis.

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**Sea Level Rise:** The proposed California WaterFix intake facilities were deliberately designed and located to adapt to conservative long-term projected sea-levels, and for purposes of evaluating operations, DWR used the mid-range climate change in the Delta and sea level rise assumptions through 2060. Council staff asserts that California WaterFix failed to rely on best available science because DWR should have used modeling projected for 2100.

Staff have misapplied the policy guidance provided in the reports it cites. Those reports suggest that policy makers design physical components of projects on the coast with a long-term useful life to withstand the highest sea level rise scenarios projected for 2100 based on recommendations for risk tolerance in infrastructure design by other agencies. California WaterFix is designed to withstand a 200-year flood event conservatively assuming sea level rise of 55 inches—nearly five feet—at Golden Gate Bridge, which is on the higher end of climate change and sea level rise assumptions. Rising sea levels only reinforce the need for California WaterFix and further analysis would only prove a point DWR has already made. Moreover, it is not within the Council’s authority under the Delta Reform Act or the Best Available Science policy to substitute another agency’s risk tolerance for DWR’s. As noted by the NOAA and OPC reports cited in the Draft Determination, that is a policy decision, not scientific information.

**Water Quality Control Plan Flow Criteria.** Council staff’s preliminary determination that there is no substantial evidence in the administrative record to support California WaterFix’s consistency with applicable Delta flow criteria is also erroneous. The administrative record fully supports DWR’s certification that the project can and will be operated to meet all applicable flow criteria, including the Export/Inflow ratio (E/I ratio) and the Contra Costa chloride standards. Although DWR has proposed to modify the definition of “inflow” to account for the new north-Delta intakes, DWR’s definition is more conservative than the current ratio, meaning it is more protective against entrainment in the south Delta than would be the case if the current definition and ratio were applied. Thus, there is substantial evidence that California WaterFix is consistent with the current E/I ratio. Additionally, the record shows that California WaterFix and the No Action Alternative perform the same to meet the Contra Costa chloride daily 250 mg/L standard. Where there are modeled exceedances (5% of the 16-year modeled simulation), modeling experts have indicated that these are likely due to model limitations. As the record describes, DWR and USBR operators provided expert testimony that they can meet all of the D-1641 standards. The Council should direct staff to rectify this and other errors in the staff’s Draft Determination regarding consistency with the flow criteria policy, and deny the appeals based on alleged inconsistency.

**Delta Land Use Impacts.** Council staff suggests that the administrative record lacks substantial evidence that California WaterFix has mitigated alleged impacts to Delta parks, recreation, and cultural and historic resources “to the extent feasible.” But the policy at issue, DP P2, does not impose a mitigation standard. Rather, it requires agencies proposing water infrastructure projects to “site” the project, when feasible, to avoid or lessen conflicts with existing or planned local land uses. The Final EIR/EIS studied 18 project alternatives with various alignments and surface canals versus tunnels, as well as the No Action Alternative. DWR explained in the CEQA Findings of Fact and Statement of Overriding Considerations, based on substantial evidence, why California WaterFix is the only feasible alternative. In addition, DWR has documented how the siting and

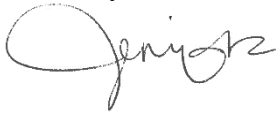
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design of California WaterFix and its predecessor alternative have been refined over time to avoid or lessen conflicts with Delta land uses. Moreover, staff does not specify what additional actions are necessary to comply with its asserted understanding of the policy as requiring all feasible mitigation, creating what is essentially a bureaucratic guessing game were the Council to remand the certification on these grounds. It should be noted that tunneling compared to construction of a canal is a major component of the project that has avoided and mitigated many potential effects, and has resulted in a substantial increase in cost of the project. This is just one of the several project revisions specifically made to avoid and reduce conflicts with Delta land uses.

The regulatory burdens and uncertainties surrounding the staff Draft Determination have deeply troubling implications for any project proposal to advance the coequal goals and address the unacceptable status quo in the Delta, and for the Stewardship Council itself and its role in promoting improved Delta water conveyance infrastructure, reliable water supplies for the state, and a restored Delta ecosystem. The Council should refocus on DWR's substantial evidence that supports DWR's certification of consistency for California WaterFix and direct staff to revise the Draft Determination accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Pierre". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jennifer Pierre  
General Manager