



Legal & Claims Committee

# Report on Delta Conveyance Project Environmental Litigation

Item 7a

November 18, 2024

## Item 7a Introduction

### Subject

- Report on environmental litigation challenging DWR's Delta Conveyance Project approval, certification of the Final Environmental Impact Report and other actions taken under the California Environmental Quality Act, currently ten consolidated cases pending in Sacramento County Superior Court

### Purpose

- Status update

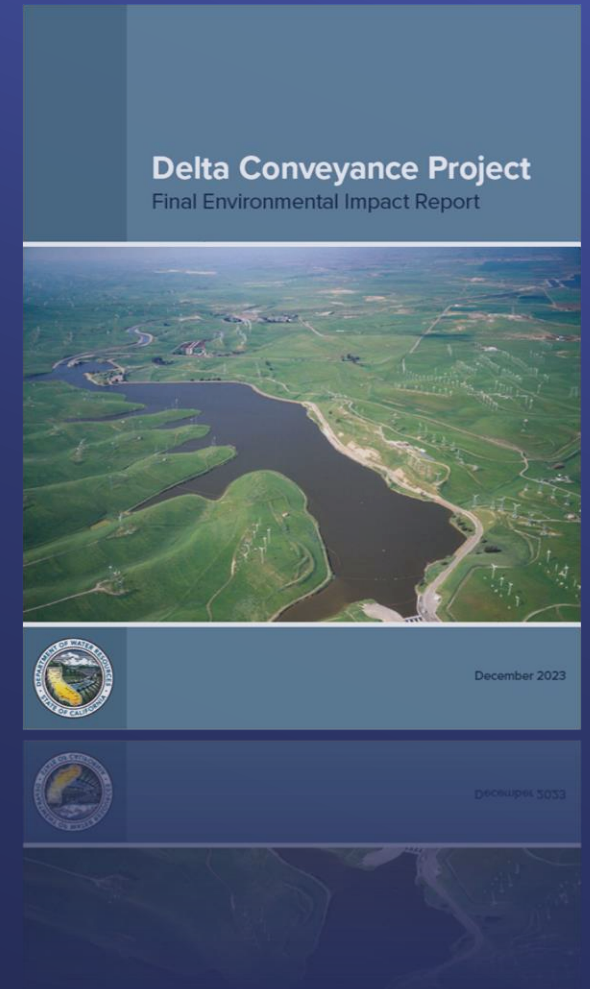
### Next Steps

- Regular updates in GC reports and committee

# Background

## Project Approval and CEQA Actions Dec. 21, 2023

- DWR certified the Final EIR
- Approved the DCP (Alt 5)
- Filed a Notice of Determination  
→ 30-day statute of limitations
- Nine cases filed in January 2024
- Tenth case filed May 13, 2024



# Ten Cases

(DWR is the only  
named defendant)

- City of Stockton
- Butte County
- Sacramento County, et al.
- San Joaquin County, et al.
- Sacramento Area Sewer District
- San Francisco Baykeeper, et al.
- Sierra Club, et al.
- Tulare Lake Basin Water Storage District
- South Delta Water Agency & Rudy Mussi Investm't L.P.
- North Delta Water Agency

# 36 Plaintiffs

- 13 Environmental NGOs
- 5 Delta Counties (members of the DCC)
- 5 Fishing NGOs
- 7 In-Delta Agencies
- 2 SWP Contractors
  - Butte County
  - Tulare Lake Basin WSD
- 1 Tribe
- 1 Tribal Environmental NGO
- 1 City (Stockton)
- 1 Delta Landowner

# Causes of Action

- CEQA
- Delta Reform Act
- Public Trust Doctrine
- Delta and Watershed Protection Acts
- Fully Protected Species Statute (Birds)
- Prop. 9
  - 1982 referendum on Peripheral Canal
- Central Valley Project Act
  - Exceeds DWR's authority to modify the SWP

# Preliminary Injunction on Geotech

- 5 Motions to halt geotechnical soils testing along the 45-mile alignment
- Based on Delta Reform Act
  - Is the geotech “initiation of implementation” of the DCP?
  - Trial court ruled it is, thus, a certification of consistency with the Delta Plan is required
- June 2024 Injunction (Geotech only)
- DWR appealed
- DWR’s motions to modify and stay the injunction denied
- Next step: briefing the appeals



# Preliminary Injunction on Geotech (cont.)

- DWR filed a Delta Plan certification of consistency for geotech on October 7, 2024
- 4 appeals filed with the Delta Stewardship Council
- Hearing on appeals Dec. 19, 2024
- Written ruling within 60 days of hearing
- If appeals are denied, DWR must move to lift the injunction





# Case status

## Cases still in early stage

- Oct. 24<sup>th</sup> order consolidating the cases under *Tulare Lake Basin Water Storage District v. California Department of Water Resources*
- DWR completing the administrative record (est. early 2025)
  - The administrative record is foundational
  - Once certified, merits briefing begins
- CEQA claims entitled to priority

# Next Steps

- April 2025 Case Management Conference
- Regular updates in the monthly GC Report and at Legal & Claims Committee

