



Bay-Delta Resources

12/8/2025 Joint One Water and Adaptation Committee and Subcommittee on Imported Water

6c

Subject

Delta Conveyance Project Update

Executive Summary

This report provides a status update on current funding agreements, legislation, permitting, and litigation related to the Delta Conveyance Project (DCP).

Details and Background

2025 Budget Trailer Bill

In May 2025, the Governor's office introduced legislation to support the planning phase of the DCP. The Governor's proposed trailer bill included language that would have streamlined certain processes to accelerate the project. These changes included provisions that would have:

- Made it easier for the California Department of Water Resources (DWR) to acquire property for the project from willing sellers.
- Required the State Water Resources Control Board (State Water Board) to cancel certain water rights protests that do not meet their own requirements.
- Declared State Water Project (SWP) water rights perpetual, which would have removed an issue from the DCP water right change in point of diversion proceeding and addressed uncertainty over DWR's current water rights and operations.
- Expressly included new Delta conveyance as part of the SWP to facilitate future judicial validation of revenue bonds to be repaid by SWP contractors.
- Expedited legal challenges that affect project construction.

Although passage of the trailer bill would have improved the timeline for financing and construction of the DCP, it was not necessary for the project to succeed. DWR, the Delta Conveyance Design and Construction Authority (DCA), and the State Water Contractors (SWC) and its participating members are working collaboratively and diligently to meet key milestones and provide the information Metropolitan's Board has requested prior to a decision whether to participate in the implementation phase of the project in 2027.

DWR Commitments to Metropolitan

Prior to Metropolitan's affirmative board vote on continued DCP funding in late 2024, Metropolitan and DWR exchanged letters in which DWR made specific commitments to Metropolitan. DWR has made progress in meeting these commitments as outlined below.

- **\$75 million refund to partially resolve protest items**
Check from DWR received by Metropolitan in mid-November 2025.

- **Obtaining Key Permits and Certifications**

State Incidental Take Permit issued in February 2025, and Federal Biological Opinions for construction are expected in early 2026. Other proceedings, including water rights and Delta Plan consistency, are also ongoing.

- **Closing Project Funding Gap**

DWR has met with contractors throughout 2025 with different funding proposals, including discussions to advance opportunities for expanding beneficiaries.

- **Improving Near-Term SWP Reliability**

DWR's first Climate Adaptation Strategy was released in early 2025 and evaluated a portfolio of solutions including new storage, forecast-informed reservoir operations, and DCP.

Agreement for Advance Contribution of Money for Preliminary Planning and Design Costs

DWR has expressed its continuing commitment to the proportional funding of the project's planning and preconstruction phase costs in its latest monetary contribution agreements with SWP contractors. These agreements also provided important financial "off-ramps."

In December 2024, Metropolitan's Board authorized up to \$141.6 million for Metropolitan's share of DCP planning and other preconstruction costs for calendar years 2026 and 2027, subject to the following conditions and goals now memorialized by contract:

- DWR may use Metropolitan's monetary contribution only to support the finalization of planning and other preconstruction costs (including the acquisition of state and federal permits and other authorizations)—not implementation.
- Metropolitan's quarterly payments for its share of DCP planning and other preconstruction costs may be paused or terminated if DWR does not obtain all major permits on or before December 31, 2026, or if anything occurs that results in a material adverse change in the benefits or costs of the DCP relative to the updated cost estimate for the DCP of \$20.1 billion in real 2023 dollars (2024 Cost Estimate) and the Benefit-Cost Analysis of the DCP prepared by the Berkeley Research Group (2024 Benefit-Cost Analysis).

Preconstruction permitting and planning work is ongoing. DWR has obtained or is in the process of obtaining:

- Programmatic Biological Opinions for operations from the U.S. Fish and Wildlife Service and National Marine Fisheries Service under the federal Endangered Species Act (issued 2024).
- Biological Opinions for construction (anticipated early 2026).
- An Incidental Take Permit from the California Department of Fish and Wildlife under the California Endangered Species Act (issued 2025).
- An order from the State Water Board approving a change in points of diversion for the SWP's water rights.
- Delta Reform Act compliance, which includes a certification of consistency with the Delta Plan under the Delta Reform Act submitted to and, if appealed, adjudicated by the Delta Stewardship Council (anticipated by the end of 2026).

The planned activities through 2027 will provide new information needed to calculate the benefits, risks, and costs of DCP prior to the Metropolitan Board making a final decision on whether to participate in the project beyond the current planning and preconstruction phase. A project roadmap detailing these planned activities was published by the DCA in October 2025 and is provided as **Attachment 1**.

Note that the funding authorized and worked planned are through calendar year 2027 (end of December). Metropolitan is poised to adopt a new budget for fiscal years 2026 and 2027 (July through June is the fiscal year), which includes the \$141.6 million previously authorized. Assuming Metropolitan's Board adopts the proposed budget in 2026, the budget may need to be adjusted in 2027 to ensure adequate funding for potential work

conducted January through June 2028. Executive management deliberately decided not to include funding for those six months in the biennial budget given the uncertainties known at this time.

Water Rights – Change in Point of Diversion (CPOD)

The SWP water rights require an additional point of diversion to allow for diversions from the DCP. DWR submitted a petition to add two additional points of diversion, and the State Water Board noticed this petition in February 2024. Parties submitted protests to the petition in May 2024, and DWR worked through 2024 to settle protests prior to the hearing.

The CPOD hearing started in March 2025. In this water rights hearing, it is possible that the SWP's water rights could be conditioned to constrain and define the operation of the DCP, and the underlying existing SWP water rights could be further limited until a time extension proceeding is completed.

- DWR and the SWC's opening testimony has been submitted, and cross-examination of DWR and SWC witnesses is complete.
- DWR and SWC completed cross-examining opposition witnesses in November 2025.
- The State Water Board Administrative Hearing Office (AHO) scheduled three informational site visits in October and November 2025 to view DCP facility locations and areas of potential impacts.
- DWR's rebuttal testimony is due in December 2025, and cross-examination of rebuttal witnesses is scheduled to start in February 2026.
- The AHO ordered DWR to provide new modeling runs with variations of an unimpaired hydrograph-controlled operation of DCP layered on existing DCP operations. The model is due in December 2025. The date for providing the model results is currently unknown. There will likely be more cross-examination dates added to March 2026 to allow cross-examination on the new modeling.
- Protestants deadline for submitting rebuttal testimony and exhibits is April 30, 2026, and cross-examination is scheduled for June and July 2026.
- DWR's surrebuttal is due July 24, 2026, and the cross-examination will start on August 21, 2026.
- The AHO has not provided a schedule for closing briefs, completion of the AHO report, or the State Water Board process for making a final determination on the petition.

Delta Plan Consistency Certification

On October 3, 2025, DWR issued a notice of intent to submit a certification of consistency with the Delta Plan for the DCP. DWR requested comments on the posted certification of consistency by October 13, 2025, and formally submitted it to the Delta Stewardship Council (DSC) on October 17, 2025, which triggered an administrative appeal process timeline based on the Delta Reform Act and the DSC's administrative procedures governing appeals.

- Any appeals to DWR's certification of consistency must be filed within 30 days, which fell on Monday, November 17, 2025, due to the 30th day being a Sunday.
- On November 24, 2025, the DSC granted a 30-day time extension to hold the hearing in addition to the standard 60 days. This moved the hearing date to February 26-27, 2026.
- Following the appeal hearing, the DSC has 60 days to adopt a written determination granting or denying the appeals, meaning by April 27, 2026.
- If the DSC denies all appeals, DWR would be permitted to initiate implementation; however, construction may not begin until after completion of the CPOD process, and SWC funding commitments have been secured.
- If the DSC grants any appeals, the certification would be remanded, and DWR would need to prepare and submit a revised certification of consistency addressing the DSC's remand.

- A revised certification of consistency and second appeals process limited to the remanded issues can be completed by the end of 2026, well before a board decision in 2027.
- Unlike the CPOD and some other permitting processes, the DSC has no authority to impose conditions on covered actions, including the DCP; it only decides whether DWR's certification of consistency is supported by substantial evidence in DWR's administrative record.

Status of California Environmental Quality Act (CEQA) Cases

Ten consolidated CEQA cases were filed in 2024 challenging the project approval and Final Environmental Impact Report (EIR) under CEQA, the Delta Reform Act, the Delta Protection Act, the public trust doctrine and other theories. There is one newer CEQA case filed in July 2025 alleging DWR should have analyzed the DCP with DWR's 2025 petition to the State Water Board to extend the time to perfect its SWP water rights.

- The administrative record is nearing completion in the ten consolidated cases. Once complete (currently set for early March 2026), briefing on the merits will begin.
- A trial and ruling on the merits could occur as early as the spring or early summer of 2026.
- There is a hearing on DWR's motion to dismiss the most recent 2025 CEQA case on December 5, 2025.

Status of Geotechnical Soil Testing

The DCA completed 199 borings and other tests to inform the Draft and Final EIR, as well as the 2024 cost estimate. After project approval in December 2023, the DCA commenced additional geotech along the approved project's alignment before the trial court's June 2024 preliminary injunction ruling enjoined DWR from conducting further testing until DWR certified consistency with the Delta Plan and completed the administrative appeal process.

- DWR appealed the injunction, which went to oral argument on September 16, 2025, and in October 2025, the court of appeal reversed the trial court order granting the injunction.
- Unless the plaintiffs seek and the California Supreme Court issues a stay, the DCA could resume geotech in the spring of 2026.

Status of Bond Validation

There are two revenue bond validation cases. The first was filed in August 2020 and consolidated with a CEQA challenge and is pending on appeal. The second was filed in January 2025 based on a new revenue bond resolution that addresses the adverse trial court ruling in the 2020 case. DWR filed the second, 2025 validation action in case it loses on appeal in the 2020 case. A win in either case would confirm that the revenue bonds are valid, meaning DWR has the legal authority to issue them, which is a practical prerequisite to marketing bonds as investors want assurance that the bonds are valid and will be repaid.

- The appeal and cross-appeals in the 2020 case were fully briefed in May 2025.
- The Court of Appeal heard oral argument on November 19, 2025.
- The court has 90 days to issue a decision after oral argument, meaning a decision should issue by the end of February 2026.
- In the 2025 case, DWR defeated two trial court motions to dismiss the case in June and successfully moved to have the case related and assigned to the same trial court judge in the 2020 case to expedite trial.
- In September 2025, DWR and the supporting public water agencies convinced the trial court to schedule briefing and set a trial in the 2025 case for March 2026, which is significantly faster than the 2020 case, which took nearly three years to reach trial.

Roadmap Through 2027

