

Appeal of Certification of Consistency

C20185-A5

Step 1 - Appellant(s) Information

Appellant Representing: City of Stockton
Primary Contact: Kelley Taber
Address: 500 Capitol Mall, Suite 1000
City, State, Zip: Sacramento, CA 95814
Telephone/Fax: 9164693841 / 9164468199
E-mail Address: mbracha@somachlaw.com

Step 2 - Covered Action being Appealed

Covered Action ID: C20185
Covered Action Title: California WaterFix
Agency Subject to Appeal: California Department of Water Resources
Contact Person Subject to Appeal: Katherine Marquez
Address: 3500 Industrial Blvd., Room 117
City, State, Zip: West Sacramento, CA 95691
Telephone/Fax: (916) 651-9569
E-mail Address: cwf_dp_consistency@water.ca.gov

Covered Action
Description:

The Department of Water Resources' (DWR) fundamental purpose in proposing the California WaterFix is to make physical and operational improvements to the State Water Project (SWP) system in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and Central Valley Project (CVP) south of the Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations. The fundamental purpose is informed by past efforts taken within the Delta and the watersheds of the Sacramento and San Joaquin Rivers, including those undertaken through the CALFED Bay-Delta Program and Delta Risk Management Strategy. Attached is a summarized project description of California WaterFix from the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) describing the conveyance facilities, operations and Environmental Commitments. For a detailed version see Final EIR/EIS, Chapter 3, Description of Alternatives. As typical for construction projects of this size, engineering refinements have developed through the planning process. The California WaterFix Project Refinements document of this July 2018 certification of consistency describes these refinements, as documented in the California WaterFix Addendum to the Final Environmental Impact Report (EIR) and in the California WaterFix Draft Supplemental EIR/Environmental Impact Statement (EIS). The California WaterFix Project Refinements document goes on to describe how the refinements in each CEQA document do not conflict with the conclusions nor do they significantly change the detailed findings for each of the Delta Plan Policies in the Delta Plan Certification of Consistency for the California WaterFix as supported, in part, by the 2016 Final EIR/EIS and 2017 certified Final EIR. The WaterFix certification of consistency is based on DWR's interpretation of the

Delta Plan policies, which was developed with support from DSC staff through the early consultation process. If it is determined by the DSC Delta Council that a Delta Plan policy DWR finds to be not applicable to California WaterFix, in fact does apply to portions of California WaterFix, and/or full consistency with the policy as interpreted by the Council is not feasible, California WaterFix should still be found to be consistent with the Delta Plan pursuant to subdivision (b)(1) of section 5002 of title 23 of the California Code of Regulations. That provision states that, where full consistency with all relevant regulatory policies may not be feasible, an agency proposing a covered action may nevertheless certify that the action is consistent with the overall Delta Plan by certifying that the action is consistent with the coequal goals themselves. As demonstrated in the Final EIR/EIS and described in California WaterFix and the Coequal Goals document, California WaterFix is consistent with the coequal goals themselves.

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

a. [G P1\(b\)\(2\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\)](#) - Mitigation Measures

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute [mitigation measures](#) that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

The specific grounds for appeal and detailed statement of facts are in the attached letter dated August 27, 2018 and attached evidence Stockton-1 through Stockton-19. Regarding Mitigation Measures, see attachments Stockton-4, -5, -6, -7, -8, -9, -10, -16, -18. [Stockton 1 - CA WaterFix CEQA Findings of Fact & Statement of Overriding Considerations.pdf](#), [Stockton 10 - Agreement for Mitigation Impacts to Contra Costa Water Dist.pdf](#), [Stockton 11 - Delta Independent Science Board letter re environmental docs.pdf](#), [Stockton 12 - Delta Independent Science Board letter re FEIR EIS for WaterFix.pdf](#), [Stockton 13 - Sur-Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 14 - Exponent Technical Response to Petitioners' Rebuttal Testimony.pdf](#), [Stockton 15 - Regional Wastewater Control Facility Attachment F - Fact Sheet.pdf](#), [Stockton 16 - Part 2 Testimony of C. Mel Lytle.pdf](#), [Stockton 17 - Municipal Utilities Dept May 2016 Rate Study.pdf](#), [Stockton 18 - Part 2 Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 19 - Part 2 Rebuttal Testimony of Dr. Richard A Denton.pdf](#), [Stockton 2 - Letter from David Murillo to Karla Nemeth.pdf](#), [Stockton 3 - Memorandum from Secretary of Interior to Solicitor et al.pdf](#), [Stockton 4 - Rubuttal Testimony of Susan Paulsen.pdf](#), [Stockton 5 - Sur-Rebuttal Testimony of Robert Granberg.pdf](#), [Stockton 6 - Exponent Report on the Effects of CA WaterFix on City of Stockton.pdf](#), [Stockton 7 - Testimony of Robert Granberg & NPDES Permit.pdf](#), [Stockton 8 - Part 2 Testimony of Robert Granberg.pdf](#), [Stockton 9 - SWRCB Res No 68-16.pdf](#), [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

Answer Justification:

b. [G P1\(b\)\(3\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(3\)](#) - Best Available Science

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see [Appendix 1A](#), which is referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The specific grounds for appeal and detailed statement of facts are in the attached letter dated August 27, 2018. See all attached evidence and specifically, attachments Stockton-4, -6, -8, -11, -12, -13, -14, -15, -16, -18. [Stockton 11 - Delta Independent Science Board letter re environmental docs.pdf](#), [Stockton 12 - Delta Independent Science Board letter re FEIR EIS for WaterFix.pdf](#), [Stockton 13 - Sur- Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 14 - Exponent Technical Response to Petitioners' Rebuttal Testimony.pdf](#), [Stockton 15 - Regional Wastewater Control Facility Attachment F - Fact Sheet.pdf](#), [Stockton 16 - Part 2 Testimony of C. Mel Lytle.pdf](#), [Stockton 18 - Part 2 Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 4 - Rubuttal Testimony of Susan Paulsen.pdf](#), [Stockton 6 - Exponent Report on the Effects of CA WaterFix on City of Stockton.pdf](#), [Stockton 8 - Part 2 Testimony of Robert Granberg.pdf](#)

c. [G P1\(b\)\(4\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(4\)](#) - Adaptive Management

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see [Appendix 1B](#), which is referenced in this regulatory policy. Note that this requirement may be satisfied through both of the following:

(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The specific grounds for appeal and detailed statement of facts are in the attached letter dated August 27, 2018. See specifically attachments Stockton-1, -4, -18. [Stockton 1 - CA WaterFix CEQA Findings of Fact & Statement of Overriding Considerations.pdf](#), [Stockton 18 - Part 2 Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 4 - Rubuttal Testimony of Susan Paulsen.pdf](#)

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#) - Transparency in Water Contracting

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

DELTA PLAN CHAPTER 4

[Cal. Code Regs., tit. 23, § 5002, subd. \(c\)](#) - Conservation Measure

Cal. Code Regs., tit. 23, § 5002, subd. (c) provides that a conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was: (1) Developed by a local government in the Delta; and (2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013 is deemed to be consistent with the regulatory policies listed under Delta Plan Chapter 4 of this Form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Is a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available? Yes, Inconsistent

Answer Justification: [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#) - Delta Flow Objectives

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: The specific grounds for appeal and detailed statement of facts are in the attached letter dated August 27, 2018. See specifically attachments Stockton-4, -6, -18. [Stockton 18 - Part 2 Rebuttal Testimony of Susan Paulsen.pdf](#), [Stockton 4 - Rubuttal Testimony of Susan Paulsen.pdf](#), [Stockton 6 - Exponent Report on the Effects of CA WaterFix on City of Stockton.pdf](#)

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#) - Restore Habitats at Appropriate Elevations

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[ER P3 / Cal. Code Regs., tit. 23, § 5007](#) - Protect Opportunities to Restore Habitat

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#) - Expand Floodplains and Riparian Habitats in Levee Projects

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[ER P5 / Cal. Code Regs., tit. 23, § 5009](#) - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

DELTA PLAN CHAPTER 5

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - **Locate New Urban Development Wisely**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#) - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - **Prioritization of State Investments in Delta Levees and Risk Reduction**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#) - **Require Flood Protection for Residential Development in Rural Areas**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

[RR P3 / Cal. Code Regs., tit. 23, § 5014](#) - **Protect Floodways**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

The City of Stockton does not appeal DWR's Certification of Consistency on this basis, but does not agree that it is consistent with this Delta Plan policy. [08272018 Stockton Appeal to DSC re DWR Cert \(00039062\).pdf](#)

08/27/2018