

# Appeal of Certification of Consistency

**C20185-A1**

## Step 1 - Appellant(s) Information

Appellant Representing: North Coast Rivers Alliance, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, Winnemem Wintu Tribe

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## 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

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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

Answer Justification: Please see attached Appeal Letter, titled NCRA et al Appeal of WaterFix.pdf, which addresses all grounds for appeal. [NCRA et al Appeal of WaterFix.pdf](#)

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##### 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: [NCRA et al Appeal of WaterFix.pdf](#)

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##### 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: [NCRA et al Appeal of WaterFix.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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.pdf](#)

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[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: [NCRA et al Appeal of WaterFix.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: While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.pdf](#)

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[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: [NCRA et al Appeal of WaterFix.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: [NCRA et al Appeal of WaterFix.pdf](#)

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[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: While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.pdf](#)

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[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: While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.pdf](#)

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[RR P4 / Cal. Code Regs., tit. 23, § 5015](#) - Floodplain Protection

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

Yes, Inconsistent

Answer Justification:

While the appeal does not address this issue, WaterFix is inconsistent with this policy. [NCRA et al Appeal of WaterFix.pdf](#)

**08/24/2018**