

# Appeal of Certification of Consistency

**C20185-A7**

## Step 1 - Appellant(s) Information

Appellant Representing: San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta

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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

Address: 3500 Industrial Blvd., Room 117

City, State, Zip: West Sacramento, CA 95691

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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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta ("Delta Counties and LAND") generally appeal DWR's entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council's applicable regulations or the Coequal Goals. Additional information regarding the Project's inconsistency with applicable requirements is included in Delta Counties/LAND's Appeal documents. [SJC\\_223 Lambie.pdf](#), [Antioch\\_300 Paulsen.pdf](#), [Antioch-500 Paulsen.pdf](#), [CCC-SC\\_10.pdf](#), [CCC-SC\\_11.pdf](#), [ccc-sc\\_63 Increased Exports During Dry Periods.pdf](#), [ccc-sc\\_67 MWD Presentation July 10 2018.pdf](#), [ccc-sc-59 HC3 Comparison.pdf](#), [DCL- 2 1986 Coordinated Operations Agreement CVP SWP.pdf](#), [DCL- 3 DSC Item\\_11 Update Re CWF Feb. 22-24 2017.pdf](#), [DCL-1 WIFIA Solic.pdf](#), [DCL-4 cwfnotice\\_pet\\_hrg.pdf](#), [DCL-5 CCC Letter re Plan B.pdf](#), [dwr\\_1292 Reyes Memo.pdf](#), [land\\_121 USACE Permit App.pdf](#), [ndwa\\_500 Kienlen.pdf](#), [ndwa\\_502 MBK Report.pdf](#), [NRDC-204 Burman Ltr.pdf](#), [scwa\\_200 Mehl.pdf](#), [scwa\\_300 Schmitz.pdf](#), [sdwa\\_320 MWD Board Meeting Packet July 10 2018.pdf](#), [sdwa\\_321 Michael.pdf](#), [SJTA 203 Woodley Letter.pdf](#), [sosc\\_81Wirth Presentation.pdf](#), [stkn\\_47 Paulsen.pdf](#), [ccc-sc\\_52 CVP Share of Exports under H3+.pdf](#), [dwr-1143 Revised Operations Criteria.pdf](#), [172-11ExhIndex.xlsx](#), [DCL Exh Index.xlsx](#), [DCL Appeal.pdf](#)

##### 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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta (“Delta Counties and LAND”) generally appeal DWR’s entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council’s applicable regulations or the Coequal Goals. Additional information regarding the Project’s inconsistency with applicable requirements is included in Delta Counties/LAND’s Appeal documents. [ecos\\_11 Lamare.pdf](#), [fsl\\_21 Ivey.pdf](#), [land\\_148 Dooling&Popper.pdf](#), [SJC\\_200 Brett.pdf](#), [sosc\\_21 Pandolfino.pdf](#), [sosc80 Wirth.pdf](#), [DCL Exh Index.xlsx](#), [DCL Appeal.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:

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[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:

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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:

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**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:

[DCL Exh Index.xlsx](#), [DCL Appeal.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:

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consistent with any of the Council's applicable regulations or the Coequal Goals. Additional information regarding the Project's inconsistency with applicable requirements is included in Delta Counties/LAND's Appeal documents. [CCC-SC\\_20 DISB letter to DWR.pdf](#), [DWR-1012 Testimony Greenwood.pdf](#), [DWR-1029 PPT Greenwood.pdf](#), [DWR-1069 Modeling Output Figures.pdf](#), [DCL Exh Index.xlsx](#), [DCL Appeal.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:

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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:

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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:

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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:

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## 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:

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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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta (“Delta Counties and LAND”) generally appeal DWR’s entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council’s applicable regulations or the Coequal Goals. Additional information regarding the Project’s inconsistency with applicable requirements is included in Delta Counties/LAND’s Appeal documents. [DCL-101 SWRCB Hearing Transcript March 15 2018.pdf](#), [LAND 130 Van Loben Sels.pdf](#), [land\\_123 Roadway segments of concern.pdf](#), [LAND135 Shilling.pdf](#), [LAND188 Robinson.pdf](#), [LAND205 Stirling.pdf](#), [saco\\_1 Sac Gen Plan Ag ele.pdf](#), [saco\\_18 Moghissi.pdf](#), [SDWA\\_134 Michael.pdf](#), [SDWA\\_141 DPC Econ Sust Plan.pdf](#), [SJC\\_291 Neudeck.pdf](#), [SJC\\_323 Balaji.pdf](#), [SJC327 Nakagawa.pdf](#), [SJC328 Project Refinement Fact Sheet.pdf](#), [SJC-329 Excerpts from ASDEIRS.pdf](#), [SOSC 72 Yee.pdf](#), [yolo\\_1 kokkas.pdf](#), [DCL Exh Index.xlsx](#), [DCL Appeal.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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta (“Delta Counties and LAND”) generally appeal DWR’s entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council’s applicable regulations or the Coequal Goals. Additional information regarding the Project’s inconsistency with applicable requirements is included in Delta Counties/LAND’s Appeal documents. [DCL Exh Index.xlsx](#), [DCL Appeal.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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta (“Delta Counties and LAND”) generally appeal DWR’s entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council’s applicable regulations or the Coequal Goals.

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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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta ("Delta Counties and LAND") generally appeal DWR's entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council's applicable regulations or the Coequal Goals. Additional information regarding the Project's inconsistency with applicable requirements is included in Delta Counties/LAND's Appeal documents. [DCL Exh Index.xlsx](#), [DCL Appeal.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:

San Joaquin County, Contra Costa County, Solano County, Yolo County, and Local Agencies of the North Delta ("Delta Counties and LAND") generally appeal DWR's entire consistency determination for the Delta Tunnels Project. The Project is not consistent with any of the Council's applicable regulations or the Coequal Goals. Additional information regarding the Project's inconsistency with applicable requirements is included in Delta Counties/LAND's Appeal documents. [DCL Exh Index.xlsx](#), [DCL Appeal.pdf](#)

**08/27/2018**