Appeal of Certification of Consistency

C20185-A3

Step 1 - Appeallant(s) Information

Appellant Representing:	Friends of the River, AquAlliance, C-WIN, CSPA, EWC, PCL, RTD, SCC
Primary Contact:	E. Robert Wright
Address:	1418 20th Street, Suite 100
City, State, Zip:	Sacramento, CA 95811
Telephone/Fax:	(916) 442-3155 x207 / (916) 442-3396
E-mail Address:	bwright@friendsoftheriver.org

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

Answer Justification:	Grounds & statement of facts attached. That document is dated 8 27 18 & should be reviewed first. Eleven files are attachments to that detailed statement. There is also a one page list of the attachments showing the section & page of the detailed statement referring to the attachment. 11 23 16 judgment.pdf, 7 31 18 AG ltr oppose Calvert rider.pdf, 7 17 18 Laird ltr oppose Calvert rider.pdf, 9 8 17 DWR ltr.pdf, 10 30 15 EPA final cmts.pdf, 5 8 15 EWC Sustainable Wat Plan.pdf, 9 30 18 bay inst full rep flows.pdf, 8 2 16 ch 7 BA.pdf, 7 21 17 Valid compl.pdf, 7 25 16 PCFFA decision alts pdf.pdf, 8 17 18 COA ltr.pdf, 7 19 18 DWR exh.pdf, 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency 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:	grounds & statement of acts attached 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.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: grounds & statement of facts attached 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.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: grounds & statement of facts attached 11 23 16 judgment.pdf, 7 31 18 AG ltr oppose Calvert rider.pdf, 7 17 18 Laird ltr oppose Calvert rider.pdf, 9 8 17 DWR ltr.pdf, 10 30 15 EPA final cmts.pdf, 5 8 15 EWC Sustainable Wat Plan.pdf, 9 30 18 bay inst full rep flows.pdf, 8 2 16 ch 7 BA.pdf, 7 21 17 Valid compl.pdf, 7 25 16 PCFFA decision alts pdf.pdf, 8 17 18 COA ltr.pdf, 7 19 18 DWR exh.pdf, 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.pdf, 11 23 16 judgment.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: grounds & statement of facts attached 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.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: 8 27 18 Final for pdf WF consistency appeal.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:	grounds & statement of facts attached 11 23 16 judgment.pdf, 7 31 18 AG ltr oppose Calvert rider.pdf, 7 17 18 Laird ltr oppose Calvert rider.pdf, 9 8 17 DWR ltr.pdf, 10 30 15 EPA final cmts.pdf, 5 8 15 EWC Sustainable Wat Plan.pdf, 9 30 18 bay inst full rep flows.pdf, 8 2 16 ch 7 BA.pdf, 7 21 17 Valid compl.pdf, 7 25 16 PCFFA decision alts pdf.pdf, 8 17 18 COA ltr.pdf, 7 19 18 DWR exh.pdf, 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.pdf, 11 23 16 judgment.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:	grounds & statement of facts attached 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.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:	grounds & statement of facts attached 8 27 18 List of attachments.pdf, 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency 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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.pdf

---

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:	Inconsistent but we do not appeal on this ground 8 27 18 Final for pdf WF consistency appeal.pdf

08/27/2018