Appeal of Certification of Consistency

C20185-A2

Step 1 - Appeallant(s) Information

Appellant Representing:	Save the California Delta Alliance
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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:

A comprehensive detailed statement of facts with citation to the record covering all aspects of this appeal will follow at a later date. In general, the mitigation measures proffered in the Final Environmental Impact Report are illusory and do not amount to any enforceable or concrete commitment to do anything. The written testimony of Captain Frank Morgan before the California State Water Resources Control Board ("SWRCB") during Part 2 Rebuttal, identified as SCDA-301, is uploaded herewith. Captain Morgan's testimony discusses in detail how mitigation measures, identified as the "barge operations plan," "mitigation measure trans 1-a," and "AMM7 [aquatic weed control]", proffered as protective of Delta Navigation and Delta Recreation by the California Department of Water Resources ("DWR"), in fact have no protective or mitigating components and are no more than shams. All of the mitigation measures proffered by DWR are similarly ineffective and illusory. Many commenters on the Environmental Impact Report pointed out the illusory nature of the mitigations in detailed comments. The FEIR contains a Master Response to Comments Section, including Master Response 22 addresses commenters who raised issues with the inadequacy of mitigation measures. All comments responded to by DWR with Master Response 22 are incorporated herein and are relevant to the Council's determination of the adequacy of mitigation measures. Delta Alliance's comments on the RDEIR/S, dated October 30, 2015, outline unmitigated impacts at pages 18–23. SCDA-301 was transmitted to DWR during the review period for the Draft Certificate of Consistency under our cover letter dated July 27, 2018. Ms. Katherine Marquez of DWR confirmed receipt of SCDA-301, along with numerous other documents submitted therewith and confirmed by email that SCDA-301 and the other documents would be included in the record transmitted to the Council. However, DWR did not submit the complete record with the final Certificate of Consistency. DWR has added documents, as late as August 21 and August 22, and the

Council's website indicates that DWR will not certify the record as complete until ten days after all appeals are received. In an effort to avoid duplicative documents, Delta Alliance does not upload the documents cited hereafter that were transmitted to DWR and that DWR agreed it would transmit as a part of the record. Delta Alliance's July 27, 2018, letter to Katherine Marquez and Ms. Marquez's email response are uploaded herewith. Delta Alliance, while submitting this "notice of appeal" prior to the August 27 deadline, believes that the comprehensive detailed statement of facts with citation to the record is not due until 30 days after DWR certifies the record as complete. In the Draft Certificate of Consistency, DWR failed to identify what record the draft certificate was based upon and Section J, Supporting Documents, was left blank. This deprived putative appellants of an opportunity to review and comment upon the completeness of the record at the intended time. Upon filing its final Certificate of Consistency, DWR did not submit a complete record. It is unreasonable and a deprivation of procedural due process to expect appellants to "brief" their appeal on an incomplete and changing record and Delta Alliance hopes to come to an agreement with the Council for a reasonable briefing procedure to take place after the record is complete. Delta Alliance believes that the record before DWR consists of all those categories of documents described in Delta Alliance's July 27 letter to Katherine Marquez. It is impossible to sort out, with the current incomplete state of the record and its lack of effective organization what documents have and have not been included, and looks forward to an expeditious settling of the record. As a general matter, it is not clear that any Delta Plan Policies will ultimately apply to the determination of this appeal as the automatic stay of the judgement and writ of mandate issued in JCCP 4785 may be vacated in the near future. Although the CWF is inconsistent with 23 CCR § 5002(b)(2), it is also inconsistent with the legislative intent of the Delta Reform Act. Delta Alliance also does not necessarily agree that substantial evidence on the record before DWR is the correct standard of review. Delta Alliance checked the box acknowledging that standard only because the website would not allow further progress otherwise. The project before the Council is BDCP Alternative 4A. The standard of review for the BDCP in the Council's appeals regulations is much more stringent and expansive. The standard promulgated for the BDCP contemplated that it would be reviewed for incorporation into the Delta Plan. The Council assumed that the BDCP would come to the Council as an HCP for incorporation or would fail entirely. The Council did not contemplate that the BDCP would come to the Council as a covered action but not an HCP. Because BDCP Alternative 4A (also called WaterFix) is of an existential magnitude to the Delta, like no other covered action the Council will ever review, likely the more stringent BDCP standard applies rather than substantial evidence. Delta Alliance does not waive the argument that the more stringent and expansive standard of review applies. scda_301.pdf, Katerine Marquez July 27.pdf, Marquez July 30 email.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:

All of the projections about the impacts on water quality, flow, and all other hydrodynamic effects of the operation of the proposed new points of diversion is based upon flawed modeling. DWR admits that its modeling cannot predict effects of CWF in real, or "absolute" terms. In other words, taking historical data and feeding it into the

model fails to compute known historical conditions that actually resulted from those data. On cross-examination during the SWRCB proceedings on August 26, 2016, DWR's modeling experts freely conceded this fact. (SWRCB Record Transcript, August 26, 2016, p. 210: 2–7 [transcript uploaded herewith].) DWR's modeling experts also conceded that they were relying on a mere assumption that the models would be accurate for comparative purposes even though they were not accurate in absolute terms. (August 26 transcript pp. 211f:24–212:8.) However, in the only scientific document in the record to address this question, "A Strategic Review of CALSIM II and its Use for Water Planning, Management, and Operations in Central California" concluded that the very assumption made by DWR's modeling team--that a model could be assumed accurate in comparative terms when known to be inaccurate in absolute terms--was invalid. The Strategic Review stated on page 9 that it was "skeptical" of the assumption made by DWR about comparative vs absolute results and concluded that "This feature of the model is something that would need to be documented rather than merely assumed." (Strategic Review, p.9 [uploaded herewith].) DWR never attempted to document the validity of using the model for comparative purposes. On page 40, the Strategic Review states that "Given present and anticipated uses of CALSIM II, the model should be calibrated, tested, and documented for 'absolute' or non-comparative uses." "Maintaining the traditional 'comparative-only' use of CALSIM II is undesirable if the model is to be useful for the CVP and SWP systems, the operations of water contractors, or for statewide planning purposes." (Strategic Review, p.40.) This aspect of the unreliability of DWR's modeling has not been addressed by the ISB or any other scientific body. The admissions of DWR and the Strategic Review rejection of DWR's assumptions stand as un-contradicted expert evidence that the entire CWF edifice rests on unreliable science rejected by the relevant scientific community. The FEIR and other record documents, including descriptions of modeling support this fact. The Independent Review Panel Report for the 2016 California WaterFix Aquatic Science Peer Review, stated that CWF "relies heavily on simplistic noisy regression models of fish responses, a model structure widely viewed as unreliable for extrapolations." (2016 Aquatic Science Peer Review, p.12.) The 2006 Aquatic Science Peer Review is attached herewith. The FEIR contains a "master responses to comments" section, which includes Master Response 30, Approach to Modeling. All of the comments tagged with this master response provide additional support for the fact that the modeling is not best available science. CWF is not consistent with 23 CCR § 5002(b)(3) and is not consistent with the legislative intent of the Delta Reform Act. CWF also runs counter to the legislatively mandated 2010 Flow Criteria Report, which concludes that increasing through Delta flows, increasing outflows, and expanding X2 requirements are essential to restoring and protecting the Delta. The flow criteria report is uploaded herewith. CWF fails to protect public trust resources as required by the Delta Reform Act and is thereby not consistent with the Act, providing grounds to sustain the appeal. The Flow Criteria Report was commissioned by the legislature to determine what was required to protect Delta public trust resources. The Flow Criteria Report does not take into account competing beneficial uses, however it establishes that current practices do not adequately protect public trust resources. It also establishes the direction Delta water management should go in to provide adequate protection for public trust resources--the direction of increased through-Delta and outflows. CWF goes in the opposite direction and is thereby inconsistent with the Public Trust Doctrine and the Delta Reform Act's Public Trust requirements. scda_1 aquatic science peer review copy.pdf, PCFFA_20_strategicreview.pdf, Flow Criteria Report.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:

Almost all of DWR's assertions that CWF will not cause extensive harm to the Delta's ecosystem and water quality depend on as yet future undefined adaptive management protocols. Almost all of DWR's assertions that CWF will not cause extensive harm to the Delta's ecosystem and water quality depend on as yet future undefined adaptive management protocols. The "Adaptive Management Plan" proffered by DWR, like almost all of the Avoidance and Mitigation Measures ("AMM") included in CWF is only a promise to develop an effective adaptive management plan at a future date. Essentially, DWR's plan is to commence construction of the project and some time during the eleven or more years of construction to acquire the needed scientific knowledge to operate it in a way that does not destroy the Delta. This acquired scientific knowledge is then to be incorporated into the adaptive management plan. In order to comply with the Delta Reform Act, however, the adaptive management plan must be fully developed and reviewed prior to a finding of consistency with the Act. In order to be complete, the Adaptive Management Plan must contain a complete suite of specific triggers for action along with the specific actions that will be taken in response to each trigger. The responses must include the ability to reduce or cease diversions in real time in response to triggers. For example, a trigger could be: if particular parameters such as salinity, dissolved oxygen, temperature, etc., reach established numerical values at particular locations then, for example, diversions at the NDD will be progressively reduced or eliminated on a pre-determined schedule. Specified movements of fish populations must also be included as specific triggers. No such triggers or responses are currently included in the Adaptive Management Plan. The current Adaptive Management Plan is only a work plan to someday develop an Adaptive Management Plan. Save the California Delta Alliance's ("Delta Alliance") comments on the 2015 Recirculated Draft Environmental Impact Statement, dated October 30, 2015, discuss the failings of the Adaptive Management Plan in more detail at page 28 along with references to the Delta ISB's comments on the Adaptive Management Plan, which are still valid. Delta Alliance's October 30, 2015, comments are included in the FEIR and a part of the record before the Council. Delta Alliance's July 29, 2014, comments on the Draft EIS/EIR also discuss the failure of adaptive management at pages 9–11. FEIR Master Response to Comments 33 addresses commenters who raised concerns about the inadequacy of the Adaptive Management Plan. All those comments responded to in the FEIR with Master Response 33 are incorporated herein and are relevant to the Council's determination of the adequacy of the Adaptive Management Plan. CWF is not consistent with 23 CCR § 5002(b)(4) and is not consistent with the legislative intent of the Delta Reform Act.
adaptive management.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:

CWF contains no measures to reduce reliance on the Delta at all. CWF is a project to transfer water from the NDD to the Clifton Court Forebay and lies within the legal delta. It is a project to transfer water through the Delta within the meaning of WR-P1. The state and federal water contractors who will receive the transferred water have not complied with 23 CCR 5003 (c)(1)(C). In fact, the Contractors have declared that they will not comply with the reduced reliance measures included in 5003 (c)(1)(C) in filings in JCCP 4785 and maintained the same defiance upon appeal in CO82944. Therefore, within the four corners of 23 CCR 5003, on undisputed judicially admitted facts, CWF does not comply with the Delta Plan's mandate to reduce reliance on the Delta. The Contractor's briefs in JCCP 4785 and CO82944 are uploaded herewith.The Delta Reform Act is clear that the policy of the State of California is to reduce reliance on the Delta through regional self reliance. However, DWR repeatedly rejected calls for inclusion of portfolio elements in CWF. It has been proven that inclusion of portfolio elements (conservation, recycling, desalination, rainwater capture, integrated water management, conjunctive use, etc.) are feasible and cost effective. Delta Alliance's October 30, 2015, comments on the 2015 RDSEIS, Section III.C and III.D (pages 7–23) provide detailed discussion of the failure of DWR to include required portfolio elements. Delta Alliance's November 9, 2015, comments to the Army Corps of Engineers, pages 5–9, further provide evidence that CWF does not reduce reliance upon the Delta within the meaning of the Delta Reform Act and fails to include feasible portfolio elements [uploaded herewith]. The Natural Resources Defense Council Comments on the SDEIS dated October 30, 2015, included in the record provided by DWR, provide further evidence that CWF fails to comply with the Delta Reform Act by failing to include feasible portfolio elements. The testimony of Doug Obegi before the SWRCB (NRDC-1) and exhibits referenced therein (NRDC-3–5; 9–10) [uploaded herewith] provide further evidence that CWF fails to comply with the Delta Reform Act's requirement of reduced reliance. FEIR Master Responses to Comments 6, 7, and 31 all address commenters who raised CWF's failure to pursue portfolio elements and failure thereby and generally to comply with the Delta Reform Act's reduced reliance requirement. Those comments responded to with master responses 6, 7, and 31 are incorporated herein as further evidence that CWF fails to comply with WR-P1 and fails to comply with the Delta Reform Act. Delta Alliance's FEIR comments dated July 9, 2017, provide further evidence that CWF is not consistent with WR P1 and not consistent with the Delta Reform Act requirement to reduce reliance. Delta Alliance's July 29, 2014, comments on the Draft EIR/S provide detailed discussion of the unlawful failure of DWR to include portfolio elements in the project and concomitant unlawful failure to reduce reliance. state and fedeal contractors opening brief JCCP 4785.pdf, SLDMWA et al opening brief CO82944.pdf, SWC opening brief CO82944.pdf, NRDC-1.pdf, NRDC-3.pdf, NRDC-4.pdf, NRDC-5.pdf, NRDC-9.pdf, NRDC-10.pdf, spk-2008-00861 comments Save the California Delta Alliance as submitted.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: further argument.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:	conservation measure.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 CWF is not consistent with the flow objectives contained in D-1641. A key flow objective in D-1641 is the export to inflow ratio. CWF is expressly proposes to not comply with the D-1641 export to inflow ratio. The Delta Inflow term for the Sacramento River is measured by D-1641 at Freeport. (D-1641, Table 3, p.190.) CWF proposes to move the point of measuring the flow of the Sacramento River to downstream of Freeport and downstream of the proposed NDD. DWR acknowledges that the effect of this change away from the flow standards of D-1641 is to exclude all exports that flow through the NDD from the export term of the Export to Inflow ratio. This reduces flows on the Sacramento River below the levels required by D-1641. On cross-examination on July 29, 2016, DWR witness Jennifer Pierre admitted that CWF changes the location of the compliance point for measurement of the flow of the Sacramento River. (July 29, 2016, transcript, p.231: 12–16 [transcript uploaded herewith].) The effect of this change is that all exports through the NDD are not counted as exports, allowing DWR to export much more water and leave less water for in stream flow than is required by the flow objectives of D-1641. The movement of the compliance point and exclusion of NDD exports from the export term is repeated in the Biological Assessments, Biological Opinions, FEIR Appendix 5E, and other CWF project documents in the record. Chapter 3 of the July 2016 Revised Draft Biological Assessment is uploaded herewith. At page 3-89 it shows that all exports through the NDD are excluded from exports and measurement of Sacramento River inflow is moved downstream from Freeport and downstream of the NDD. This does not comply with D-1641 flow standards. Delta Alliance's FEIR comments of July 9, 2017, provide further evidence that CWF is not consistent with ER P1. Our July 9 comments further establish that CWF will shift exports to the summer months, exacerbating already severe water quality problems in the south Delta in the summer months. The Delta Reform Act requires that CWF restore Delta flows. Delta Alliance comments to the Army Corps of Engineers, dated November 9, 2015, provide a discussion of CWF's failure to comply with the flow restoration requirement at pages 5–9. Delta Alliance's October 30, 2015, EIR comments establish at pages 27–28. 7-29-2016 Part 1A Transcript Volume 4.pdf, Ch_3_Proposed_Action_RevisedDraftBA.pdf, spk-2008-00861 comments Save the California Delta Alliance as submitted.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: further argument.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: further argument.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: further argument.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: further argument.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: further argument.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 location and construction of the intakes will destroy the Delta Legacy Communities of Hood and Clarksburg. Evidence in the record demonstrates that Hood and Clarksburg will become ghost towns due to extensive impacts from CWF intake construction. Delta Alliance's FEIR comments and attachments of July 12, 2017, including an expert report by acoustical engineer Charles Salter, establish that the noise impacts from pile driving for the intake foundations have not been mitigated, that pile driving noise will reach an excruciating 115 dBA, and that the impact of the noise will cause abandonment of Delta legacy communities. The July 12 comments were transmitted to DWR during the draft consistency review period and DWR responded that the comments would be included in the record transmitted to the Council. Delta Alliance's SWRCB Part 2 Case-in-Chief testimony of Frank Morgan, Bill Wells, Chris Kinzel, and Rune Storesund also establish that CWF does not respect local land uses. The January 29, 2017, comments of Russel Ooms, Chairman of the Locke Management Association establish that CWF will have a devastating impact on the Locke Historic District, and thereby does not respect this local historic land use. The Delta Reform Act requires that all covered actions protect and enhance recreational values. CWF will destroy the recreation industry and recreational boating in the Delta. Delta Alliance's SWRCB Part 2 Case in Chief Testimony of Frank Morgan, Bill Wells, Chris Kinzel, Charles Salter, and Rune Storesund also establish that CWF will destroy recreation in the Delta and that CWF is not therefore consistent with the Delta Reform Act's recreation requirements. Delta Alliance's SWRCB Part 2 Rebuttal

Testimony of Bill Wells, Michael Brodsky, and Frank Morgan and attachments thereto further establish that CWF will destroy recreational boating in the Delta. These exhibits were also transmitted to DWR during the draft consistency review period and DWR agreed that they would be transmitted as part of the record to the Council, including the Delta Alliance Boater survey, establishing that recreational boaters will abandon the Delta in large numbers in response to CWF construction impacts, exhibits SCDA-352-1–SCDA-352-5. Unmitigated and devastating impacts on recreation, including marina closures, are also established by Delta Alliance FEIR comments as follows: July 10, 2017, comments of Barbara Daly; August 2, 2017 comments of Bill Wells / Delta Chambers and Visitors Bureau; July 7, 2017, comments of Bullfrog Marina / Carl Wenske; July 6, 2017, comments of Clarksburg Marina / Don and Kathleen Updegraff; July 10, 2017, comments of Frank Morgan. Delta Alliance's comments to the Army Corps of Engineers, dated November 9, 2015, discuss impacts on navigation, the Locke Historic District, and Historic Vernacular Landscapes, as well as impacts at the intakes on recreation and local land uses at pages 11–13 and include attachments supporting those arguments. The ACOE Comments are uploaded herewith. spk-2008-00861 comments Save the California Delta Alliance as submitted.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: further argument.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: further argument.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: further argument.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: further argument.pdf