Appeal of Certification of Consistency

Appeal ID: C20185-A5
Date Submitted: 8/27/2018

Step 1 - Appellant Information

Appellant Representing:	City of Stockton
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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
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

G P1 / 23 CCR SECTION 5002 – **Detailed Findings to Establish Consistency with the Delta Plan.**

In General: (23 CCR SECTION 5002 (a), (b), (1)) This regulatory policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action.

This regulatory policy only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies listed under Delta Plan Chapters 3, 4, 5 and 7 of this form implicated by the covered action. The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal;

Specific requirements of this regulatory policy:

a. **Mitigation Measures** (23 CCR SECTION 5002 (b), (2))
The covered action is not exempt from CEQA, and includes applicable feasible mitigation measures identified in the Delta Plan's Program Environmental Impact Report, (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.

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

☑ Yes, Inconsistent ☐ **No, Consistent**

Answer Justification: 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

b. **Best Available Science (**23 CCR SECTION 5002 (b), (3))
The covered action documents use of best available science as relevant to the purpose and nature of the project.

Is the covered action inconsistent with this portion of the regulatory policy? Appendix 1A is referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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

Adaptive Management (23 CCR SECTION 5002 (b), (4))

c. The covered action involves ecosystem restoration or water management, and includes adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management

Is the covered action inconsistent with this portion of the regulatory policy? Appendix 1B is referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5003 - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5004 - Transparency in Water Contracting

Is the covered action inconsistent with this regulatory policy? Appendix 2A and Appendix 2B are referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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

Conservation Measure: (23 CCR SECTION 5002 (c))

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 regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 P1 / 23 CCR SECTION 5005 - Delta Flow Objectives

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5006 - Restore Habitats at Appropriate Elevations

Is the covered action inconsistent with this regulatory policy? Appendix 3 and Appendix 4 are referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5007 - Protect Opportunities to Restore Habitat

Is the covered action inconsistent with this regulatory policy? Appendix 4 and Appendix 5 are referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5008 - Expand Floodplains and Riparian Habitats in Levee Projects

Is the covered action inconsistent with this regulatory policy? Appendix 8 is referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5009 - Avoid Introductions of and Habitat for Invasive Nonnative Species

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5010 - Locate New Urban Development Wisely

Is the covered action inconsistent with this regulatory policy? Appendix 6 and Appendix 7 are referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 / 23 CCR SECTION 5011 - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 - Prioritization of State Investments in Delta Levees and Risk Reduction

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 - Require Flood Protection for Residential Development in Rural Areas.

Is the covered action inconsistent with this regulatory policy? Appendix 7 is referenced in this regulatory policy.

☑ Yes, Inconsistent ☐ **No, Consistent**

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 - Protect Floodways

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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 P4 - Floodplain Protection

Is the covered action inconsistent with this regulatory policy?

☑ Yes, Inconsistent ☐ **No, Consistent**

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