

Delta Plan Policies

As last amended in 2019.¹

The Delta Plan contains a set of regulatory policies that will be enforced by the Delta Stewardship Council’s appellate authority and oversight, described in Chapter 2.

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| <p>G P1 (Cal. Code Regs., tit. 23, § 5002)</p> | <p>Detailed Findings to Establish Consistency with the Delta Plan</p> | <p>(a) This policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to a covered action. This 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 contained in Article 3. Inconsistency with this policy may be the basis for an appeal.</p> <p>(b) Certifications of consistency must include detailed findings that address each of the following requirements:</p> <ol style="list-style-type: none"> (1) 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 contained in Article 3 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; (2) 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, which is here by |

¹ Amendment of Cal. Code Regs., tit. 23, § 5002 subsection (b)(2) filed 5-30-2019; operative 7-1-2019 (Register 2019, No. 22).

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| | | <p>incorporated by reference, (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;</p> <p>(3) As relevant to the purpose and nature of the project, all covered actions must document use of best available science;</p> <p>(4) Ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through both of the following:</p> <ul style="list-style-type: none"> (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. <p>(c) A conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was:</p> <ul style="list-style-type: none"> (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 sections 5005 through 5009 of this Chapter 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. |
| <p>WR P1 (Cal. Code Regs., tit. 23, § 5003)</p> | <p>Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance</p> | <p>(a) Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:</p> <ul style="list-style-type: none"> (1) One or more water suppliers that would receive water as a result of the export, transfer, or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance |

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| | | <p>consistent with all of the requirements listed in paragraph (1) of subsection (c);</p> <ul style="list-style-type: none"> (2) That failure has significantly caused the need for the export, transfer, or use; and (3) The export, transfer, or use would have a significant adverse environmental impact in the Delta. <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action to export water from, transfer water through, or use water in the Delta, but does not cover any such action unless one or more water suppliers would receive water as a result of the proposed action.</p> <p>(c)</p> <ul style="list-style-type: none"> (1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are therefore consistent with this policy: <ul style="list-style-type: none"> (A) Completed a current Urban or Agricultural Water Management Plan (Plan) which has been reviewed by the California Department of Water Resources for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8; (B) Identified, evaluated, and commenced implementation, consistent with the implementation schedule set forth in the Plan, of all programs and projects included in the Plan that are locally cost effective and technically feasible which reduce reliance on the Delta; and (C) Included in the Plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. The expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed. For the purposes of reporting, water efficiency is considered a new source of water supply, consistent with Water Code section 1011(a). |

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| | | <p>(2) Programs and projects that reduce reliance could include, but are not limited to, improvements in water use efficiency, water recycling, stormwater capture and use, advanced water technologies, conjunctive use projects, local and regional water supply and storage projects, and improved regional coordination of local and regional water supply efforts.</p> |
| <p>WR P2 (Cal. Code Regs., tit. 23, § 5004)</p> | <p>Transparency in Water Contracting</p> | <p>(a) The contracting process for water from the State Water Project and/or the Central Valley Project must be done in a publicly transparent manner consistent with applicable policies of the California Department of Water Resources and the Bureau of Reclamation referenced below.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers the following:</p> <p>(1) With regard to water from the State Water Project, a proposed action to enter into or amend a water supply or water transfer contract subject to California Department of Water Resources Guidelines 03-09 and/or 03-10 (each dated July 3, 2003), which are attached as Appendix 2A; and</p> <p>(2) With regard to water from the Central Valley Project, a proposed action to enter into or amend a water supply or water transfer contract subject to section 226 of P.L. 97-293, as amended or section 3405(a)(2)(B) of the Central Valley Project Improvement Act, Title XXXIV of Public Law 102-575, as amended, which are attached as Appendix 2B, and Rules and Regulations promulgated by the Secretary of the Interior to implement these laws.</p> |
| <p>ER P1 (Cal. Code Regs., tit. 23, § 5005)</p> | <p>Delta Flow Objectives</p> | <p>(a) The State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the State Water Resources Control Board, the revised flow objectives shall be used to determine consistency with the Delta Plan.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, the policy set forth in subsection (a) covers a proposed action that could significantly affect flow in the Delta.</p> |

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| ER P2 (Cal. Code Regs., tit. 23, § 5006) | Restore Habitats at Appropriate Elevations | <ul style="list-style-type: none"> (a) Habitat restoration must be carried out consistent with Appendix 3, which is Section II of the Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (California Department of Fish and Wildlife 2011). The elevation map attached as Appendix 4 should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. If a proposed habitat restoration action is not consistent with Appendix 4, the proposal shall provide rationale for the deviation based on best available science. (b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that includes habitat restoration. |
| ER P3 (Cal. Code Regs., tit. 23, § 5007) | Protect Opportunities to Restore Habitat | <ul style="list-style-type: none"> (a) Within the priority habitat restoration areas depicted in Appendix 5, significant adverse impacts to the opportunity to restore habitat as described in section 5006, must be avoided or mitigated. (b) Impacts referenced in subsection (a) will be deemed to be avoided or mitigated if the project is designed and implemented so that it will not preclude or otherwise interfere with the ability to restore habitat as described in section 5006. (c) Impacts referenced in subsection (a) shall be mitigated to a point where the impacts have no significant effect on the opportunity to restore habitat as described in section 5006. Mitigation shall be determined, in consultation with the California Department of Fish and Wildlife, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area, taking into account existing and proposed restoration plans, landscape attributes, the elevation map shown in Appendix 4, and other relevant information about habitat restoration opportunities of the area. (d) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions in the priority habitat restoration areas depicted in Appendix 5. It does not cover proposed actions outside those areas. |
| ER P4 (Cal. Code Regs., tit. 23, § 5008) | Expand Floodplains and Riparian Habitats in Levee Projects | <ul style="list-style-type: none"> (a) Levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. Evaluation of |

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| | | <p>setback levees in the Delta shall be required only in the following areas (shown in Appendix 8):</p> <ul style="list-style-type: none"> (1) The Sacramento River between Freeport and Walnut Grove, the San Joaquin River from the Delta boundary to Mossdale, Paradise Cut, Steamboat Slough, Sutter Slough; and the North and South Forks of the Mokelumne River, and (2) Urban levee improvement projects in the cities of West Sacramento and Sacramento. <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action to construct new levees or substantially rehabilitate or reconstruct existing levees.</p> |
| <p>ER P5 (Cal. Code Regs., tit. 23, § 5009)</p> | <p>Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species</p> | <ul style="list-style-type: none"> (a) The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem. (b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(e) of this Chapter, this policy covers a proposed action that has the reasonable probability of introducing or improving habitat conditions for nonnative invasive species. |
| <p>DP P1 (Cal. Code Regs., tit. 23, § 5010)</p> | <p>Locate New Urban Development Wisely</p> | <ul style="list-style-type: none"> (a) New residential, commercial, and industrial development must be limited to the following areas, as shown in Appendix 6 and Appendix 7: <ul style="list-style-type: none"> (1) Areas that city or county general plans, as of May 16, 2013, designate for residential, commercial, and industrial development in cities or their spheres of influence; (2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except no new residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of May 16, 2013; (3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove. (b) Notwithstanding subsection (a), new residential, commercial, and industrial development is permitted outside the areas described in subsection (a) if it is consistent with |

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| | | <p>the land uses designated in county general plans as of May 16, 2013, and is otherwise consistent with this Chapter.</p> <p>(c) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions that involve new residential, commercial, and industrial development that is not located within the areas described in subsection (a). In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of May 16, 2013. This policy does not cover commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this Chapter.</p> <p>(d) This policy is not intended in any way to alter the concurrent authority of the Delta Protection Commission to separately regulate development in the Delta's Primary Zone.</p> |
| <p>DP P2 (Cal. Code Regs., tit. 23, § 5011)</p> | <p>Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats</p> | <p>(a) Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure.</p> |
| <p>RR P1 (Cal. Code Regs., tit. 23, § 5012)</p> | <p>Prioritization of State Investments in Delta Levees and Risk Reduction</p> | <p>(a) Prior to the completion and adoption of the updated priorities developed pursuant to Water Code section 85306, the interim priorities listed below shall, where applicable and to the extent permitted by law, guide discretionary State investments in Delta flood risk management. Key priorities for interim funding include emergency preparedness, response, and recovery as described in paragraph (1), as well as Delta levees funding as described in paragraph (2).</p> <p>(1) Delta Emergency Preparedness, Response, and Recovery: Develop and implement appropriate</p> |

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| | | <p>emergency preparedness, response, and recovery strategies, including those developed by the Delta Multi-Hazard Task Force pursuant to Water Code section 12994.5.</p> <p>(2) Delta Levees Funding: The priorities shown in the following table are meant to guide budget and funding allocation strategies for levee improvements. The goals for funding priorities are all important, and it is expected that, over time, the California Department of Water Resources must balance achievement of those goals. Except on islands planned for ecosystem restoration, improvement of nonproject Delta levees to the Hazard Mitigation Plan (HMP) standard may be funded without justification of the benefits. Improvements to a standard above HMP, such as that set by the U.S. Army Corps of Engineers under Public Law 84-99, may be funded as befits the benefits to be provided, consistent with the California Department of Water Resources' current practices and any future adopted investment strategy.</p> <p>Priorities for State Investment in Delta Integrated Flood Management Categories of Benefit Analysis</p> |

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| | | Goals | Localized Flood Protection | Levee Network | Ecosystem Conservation |
| | | 1 | Protect existing urban and adjacent urbanizing areas by providing 200-year flood protection. | Protect water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and the primary channels that carry fresh water through the Delta. | Protect existing and provide for a net increase in channel-margin habitat. |
| | | 2 | Protect small communities and critical infrastructure of Statewide importance (located outside of urban areas). | Protect flood water conveyance in and through the Delta to a level consistent with the State Plan of Flood Control for project levees. | Protect existing and provide for net enhancement of floodplain habitat. |
| | | 3 | Protect agriculture and local working landscapes. | Protect cultural, historic, aesthetic, and recreational resources (Delta as Place). | Protect existing and provide for net enhancement of wetlands. |
| | | (b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that involves discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements. Nothing in this policy establishes or otherwise changes existing levee standards. | | | |
| RR P2 (Cal. Code Regs., tit. 23, § 5013) | Require Flood Protection for Residential Development in Rural Areas | (a) New residential development of five or more parcels shall be protected through floodproofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect against a 55-inch rise in sea level at the Golden Gate, unless the development is located within: <ul style="list-style-type: none"> (1) Areas that city or county general plans, as of May 16, 2013, designate for development in cities or their spheres of influence; (2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island; (3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or | | | |

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| | | <p>(4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in Appendix 7.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that involves new residential development of five or more parcels that is not located within the areas described in subsection (a).</p> |
| <p>RR P3 (Cal. Code Regs., tit. 23, § 5014)</p> | <p>Protect Floodways</p> | <p>(a) No encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream.</p> |
| <p>RR P4 (Cal. Code Regs., tit. 23, § 5015)</p> | <p>Floodplain Protection</p> | <p>(a) No encroachment shall be allowed or constructed in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions:</p> <ol style="list-style-type: none"> (1) The Yolo Bypass within the Delta; (2) The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the California Department of Water Resources or the U.S. Army Corps of Engineers (California Department of Water Resources 2010); and (3) The Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the California Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense |

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| | | <p>Council, March 2011. This area may be modified in the future through the completion of this project.</p> <p>(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that would encroach in any of the floodplain areas described in subsection (a).</p> <p>(c) This policy is not intended to exempt any activities in any of the areas described in subsection (a) from applicable regulations and requirements of the Central Valley Flood Protection Board.</p> |