

**State of California
Delta Stewardship Council
715 P Street
Sacramento, CA 95814**

**California Code of Regulations, Title 23. Water
Division 6. Delta Stewardship Council
Amendments to:
Article 1. Definitions Section 5001. Definitions**

**Amendment of Sections 5001, 5002, 5003, 5004, 5005, 5006, 5007,
5008, 5009, 5010, 5011, 5012, 5013, 5014, and 5015; Addition of
Section 5005.1 and Appendix 3A, Appendix 4A, and Appendix 8A**

Proposed Amendment to Existing Regulation

[Amendments to existing sections proposed and subject to comment in this rulemaking are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions, compared to the preexisting regulatory language.]

Definitions (Section 5001)

As used in this division, the terms listed below shall have the meanings noted:

- (a) “Adaptive management” means a framework and flexible decision-making process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.
- (b) “Agricultural water management plan” means a plan prepared, adopted, and updated by an agricultural water supplier pursuant to the Agricultural Water Management Planning Act, Water Code section 10800 et seq.
- (c) “Agricultural water supplier” under the Water Code refers to both agricultural retail water suppliers and agricultural wholesale water suppliers, but not the California Department of Water Resources or the United States Bureau of Reclamation, and includes both of the following:
 - (1) A water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water; and
 - (2) A water supplier or contractor for water, regardless of the basis of the water right, that distributes or sells water for ultimate resale to customers.
- (d) “Base Flood” means the flood that has a 1-percent probability of being equaled or exceeded in any given year (also referred to as the 100-year flood).

(e) "Base Flood Elevation" (BFE) means the water surface elevation associated with the base flood.

(f) "BDCP" means the Bay Delta Conservation Plan, which was a habitat conservation plan proposed by the Department of Water Resources, U.S. Fish & Wildlife Service, National Marine Fisheries Service, and Bureau of Reclamation.

~~(f)~~(g) "Best available science" means the best scientific information and data for informing management and policy decisions. Best available science shall be consistent with the guidelines and criteria found in Appendix 1A.

~~(g)~~(h) "Central Valley Flood Protection Board" or "Board" means the Central Valley Flood Protection Board (formerly The Reclamation Board) of the Resources Agency of the State of California as provided in Water Code section 8521.

(i) "CEQA" means the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

(j) "Certification of consistency" means a written statement as described in Water Code section 85225.

~~(h)~~(k) "Certifying agency" means, for the purposes of article 5, a State or local public agency that proposes to undertake a covered action.

~~(i)~~(l) "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. In addition, "achievement" for the purpose of determining whether a plan, program, or project meets the definition of a "covered action" under section 5001~~(k)~~(o) is further defined as follows:

(1) "Achieving the coequal goal of providing a more reliable water supply for California" means all of the following:

(A) Better matching the state's demands for reasonable and beneficial uses of water to the available water supply. This will be done by promoting, improving, investing in, and implementing projects and programs that improve the resiliency of the state's water systems, increase water efficiency and conservation, increase water recycling and use of advanced water technologies, improve groundwater management, expand storage, and improve Delta conveyance and operations. The evaluation of progress toward improving reliability will take into account the inherent variability in water demands and supplies across California;

(B) Regions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses, and improve regional self-reliance, consistent with existing water rights and the State's area-of-origin statutes and Reasonable Use and Public Trust Doctrines. This will be done by improving, investing in, and implementing local and regional projects and programs that increase water conservation and efficiency, increase water recycling and use of advanced water technologies, expand storage, improve groundwater management, and enhance regional coordination of local and regional water supply development efforts; and

(C) Water exported from the Delta will more closely match water supplies available to be exported, based on water year type and consistent with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years when more water is available and conflicts with the ecosystem are less likely, and limit diversions in dry years when conflicts with the ecosystem are more likely. Delta water that is stored in wet years will be available for water users during dry years, when the limited amount of available water must remain in the Delta, making water deliveries more predictable and reliable. In addition, these improvements will decrease the vulnerability of Delta water supplies to disruption by natural disasters, such as, earthquakes, floods, and levee failures.

(2) "Achieving the coequal goal of protecting, restoring, and enhancing the Delta ecosystem" means successfully establishing a resilient, functioning estuary and surrounding terrestrial landscape capable of supporting viable populations of native resident and migratory species with diverse and biologically appropriate habitats, functional corridors, and ecosystem processes.

(3) "Achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" means accepting that change, including change associated with achieving the coequal goals, will not cease, but that the fundamental characteristics and values that contribute to the Delta's special qualities and that distinguish it from other places can be preserved and enhanced while accommodating these changes. In this regard, the following are core strategies for protecting and enhancing the unique values that distinguish the Delta and make it a special region:

(A) Designate the Delta as a special place worthy of national and state attention;

(B) Plan to protect the Delta's lands and communities;

(C) Maintain Delta agriculture as a primary land use, a food source, a key economic sector, and a way of life;

(D) Encourage recreation and tourism that allow visitors to enjoy and appreciate the Delta and that contribute to its economy;

(E) Sustain a vital Delta economy that includes a mix of agriculture, tourism, recreation, related industries and business, and vital components of state and regional infrastructure; and

(F) Reduce flood and other risks to people, property, and other interests in the Delta.

~~(j)~~(m) "Commercial recreational visitor-serving uses" means a land use designation that describes visitor-serving uses, accommodations, restaurants, and shops, that respect the rural character and natural environmental setting. These uses also include campgrounds and commercial recreational facilities.

(n) "Council" means the Delta Stewardship Council created pursuant to Water Code section 85200.

~~(k)~~(o)(1) "Covered action" means a plan, program, or project that meets all of the following criteria (which are collectively referred to as covered action screening criteria):

- (A) Is a “project,” as defined pursuant to section 21065 of the Public Resources Code;
 - (B) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
 - (C) Will be carried out, approved, or funded by the State or a local public agency;
 - (D) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta; and
 - (E) Is covered by one or more provisions of the Delta Plan, which for these purposes, means one or more of the regulatory policies contained in Article 3.
- (2) “Covered action” does not include any plan, program, or project that is exempted pursuant to Water Code section 85057.5(b).
- (3) A State or local public agency that proposes to carry out, approve, or fund a plan, program, or project that may be subject to this chapter must determine whether that proposed plan, program, or project is a covered action. That determination, which is subject to judicial review, must be reasonable, made in good faith, and consistent with the Delta Reform Act and this chapter.
- (4) Nothing in the application of the definition of a “covered action” shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.

(p) “CVP” means the federal Central Valley Project described in Water Code section 11100 et seq.

~~(h)~~(q) “Delta” means the Sacramento-San Joaquin Delta as defined in section 12220 of the Water Code and the Suisun Marsh, as defined in section 29101 of the Public Resources Code.

~~(m)~~(r) “Delta Plan” means the comprehensive, long-term management plan for the Delta to further the achievement of the coequal goals, as adopted by the Delta Stewardship Council in accordance with the Sacramento-San Joaquin Delta Reform Act of 2009.

~~(n)~~(s) “Designated Floodway” means those floodways, as defined in California Code of Regulations, Title 23, section 4 (i), under the jurisdiction of the Central Valley Flood Protection Board.

(t) “Disadvantaged community” means communities described in Health and Safety Code section 39711.

~~(o)~~(u) “Encroachment” means any obstruction or physical intrusion by construction of works or devices, planting or removal of vegetation, or by any means for any purpose, into or otherwise affecting a floodway or floodplain.

~~(p)~~(v) “Enhancement” or “enhancing,” for purposes of section 5001~~(+)~~(l)(2), means improving existing desirable habitat and natural processes. Enhancement may include, by way of example, flooding the Yolo Bypass more often to support native species or to expand or better connect existing habitat areas. Enhancement includes many fish and wildlife management practices, such as managing wetlands for waterfowl production or shorebird habitat, installing fish screens to reduce entrainment of fish at water diversions, or removing barriers that block migration of fish to upstream spawning habitats.

(w) “Environmental justice” has the same meaning as in Government Code section 65040.12(e).

~~(e)~~(x) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

~~(f)~~(y) “Floodplain” means any land area susceptible to being inundated by flood waters from any source.

~~(g)~~(z) “Floodplain values and functions” has the same meaning as set forth in 33 Code of Federal Regulations section 320.4(l)(1).

~~(h)~~(aa) “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments appropriate for residential structures, which reduce or eliminate risk of flood damage to real estate, improved real property, or structures with their contents.

~~(i)~~(bb) “Floodway” means the portion of the floodplain that is effective in carrying flow (that is, the channel of a river or other watercourse and the adjacent land areas that convey flood waters).

~~(j)~~(cc) “Government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta” means any State or federal strategy, project, approval, funding, or other effort that is intended to reduce the likelihood and/or consequences of flooding of real property and/or improvements, including risks to people, property, and State interests in the Delta, that is carried out pursuant to applicable law, including, but not limited to the following:

- (1) State Water Resources Law of 1945, Water Code section 12570 et seq.;
- (2) Sacramento-San Joaquin River Flood Control Projects (Flood Control Act of 1941, P.L. 77-228);
- (3) Local Plans of Flood Protection prepared pursuant to the Local Flood Protection Planning Act (Water Code section 8200 et seq.), that are consistent with the Central Valley Flood Protection Plan pursuant to Water Code section 9612;
- (4) Central Valley Flood Protection Plan (Water Code section 9600 et seq.);
- (5) Subventions Program, Special Projects Program (Water Code section 12300 et seq.);
- (6) Way Bill 1973-Subventions Program, Special Projects Program (Water Code section 12980 et seq.);
- (7) Central Valley Flood Protection Board Authority (California Code of Regulations, Title 23, Division 1); and
- (8) National Flood Insurance Program (National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., P.L. 90-448).

~~(k)~~(dd) “High Priority islands or tracts” means the tracts of land listed under “High Priority” in the Table (Delta Levees Investment Strategy Priorities) of Section 5012 of this title and depicted in Appendix P to the Delta Plan.

~~(l)~~(ee) “Levee improvement” means any activity that is not levee operation and maintenance, and that is intended to reduce the probability of flooding or the addition of a feature that did not previously exist. Examples of levee improvements include changing levee geometry to reach a higher level of protection, providing riprap where none previously existed, and other similar activities.

~~(m)~~(ff) “Levee operation and maintenance” means any activity to retain or maintain the intended functions of flood control facilities and of existing encroachments or needed to keep the system functioning properly. Examples of maintenance activities include mowing, tree and brush trimming and removal, revetment restoration, rodent control, spraying, painting, coating,

patching, burning, and other similar activities but does not include any significant excavation or any excavation during flood season.

~~(z)~~ “Nonnative invasive species,” for purposes of section 5009, means species that establish and reproduce rapidly outside of their native range and may threaten the diversity or abundance of native species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.

~~(gg)~~ “Nonnative invasive species” means, for purposes of section 5009, species that are all of the following:

(1) Establish and reproduce rapidly outside of their native range.

(2) May threaten the diversity or abundance of native species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.

~~(aa)~~~~(hh)~~ “Nonproject levee” means a local levee owned or maintained by a local agency or private owner that is not a project facility under the State Water Resources Law of 1945, chapter 1 (commencing with Water Code section 12570) and chapter 2 (commencing with section 12639 of Part 6 of the Water Code).

~~(ii)~~ “Oak woodland” has the same meaning as in Fish and Game Code section 1361.

~~(bb)~~~~(jj)~~ “Other Priority islands or tracts” means the tracts of land listed under “Other Priority” in the Table (Delta Levees Investment Strategy Priorities) of Section 5012 of this title and depicted in Appendix P to the Delta Plan.

~~(cc)~~~~(kk)~~ “Person” means, for purposes of article 5, any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company, and state or local public agency.

~~(dd)~~~~(ll)~~ “Project levee” means a federal flood control levee that is a project facility under the State Water Resources Law of 1945, chapter 1 (commencing with Water Code section 12570) and chapter 2 (commencing with section 12639 of Part 6 of the Water Code).

~~(ee)~~~~(mm)~~ “Proposed action” means a plan, program, or project that meets the covered action screening criteria listed in section 5001~~(k)~~~~(o)~~(1)(A) through (D). Proposed action is also a “covered action,” and therefore subject to compliance with the regulatory policies contained in Articles 2 and 3-if the proposed action meets the covered action screening criterion listed in section 5001~~(k)~~~~(o)~~(1)(E).

~~(ff)~~~~(nn)~~ “Protection” or “protecting,” for purposes of section 5001~~(i)~~~~(l)~~(2), means preventing harm to the ecosystem, which could include preventing the conversion of existing habitat, the degradation of water quality, irretrievable conversion of lands suitable for restoration, or the spread of invasive nonnative species.

~~(oo)~~ “Recreational benefits” means, for the purposes of section 5005.1, a category of social benefits that are derived by individuals or groups that recreate in the Delta and the business operations and communities that recreation supports, including, but not limited to, those listed in Table 2-2 in Appendix 3A.

~~(gg)~~~~(pp)~~ “Regulated stream” means those streams identified in Table 8.1 of California Code of Regulations, Title 23, section 112, under the jurisdiction of the Board.

~~(hh)~~(gg) "Restoration" or "restoring," for purposes of section 5001~~(i)~~(j)(2), has the same meaning as in Water Code section 85066. Restoration actions may include restoring interconnected habitats within the Delta and its watershed, restoring more natural Delta flows, or improving ecosystem water quality.

~~(ii)~~(rr) "Setback levee" means a new levee constructed behind an existing levee which allows for removal of a portion of the existing levee and creation of additional floodplain connected to the stream. In the Delta, a "setback levee" may not necessarily result in removal of the existing levee.

~~(jj)~~(ss) "Significant impact" for the purpose of determining whether a project meets the definition of a "covered action" under section 5001~~(k)~~(q)(1)(D) means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects. The following categories of projects will not have a significant impact for this purpose:

- (1) "Ministerial" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(1);
- (2) "Emergency" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(2) through (4);
- (3) Temporary water transfers of up to one year in duration.
- (4) Other projects exempted from CEQA, unless there are unusual circumstances indicating a reasonable possibility that the project will have a significant impact under Water Code section 85057.5(a)(4), as further defined by this section. Examples of unusual circumstances could arise in connection with, among other things:
 - (A) Local government general plan amendments for the purpose of achieving consistency with the Delta Protection Commission's Land Use and Resource Management Plan; and
 - (B) Small-scale habitat restoration projects, as referred to in CEQA Guidelines, section 15333 of Title 14 of the California Code of Regulations, proposed in important restoration areas, but which are inconsistent with the Delta Plan's policy related to appropriate habitat restoration for a given land elevation (section 5006 of this chapter).

~~(kk)~~ "Very High Priority islands or tracts" means the tracts of land identified under "Very High Priority" in the Table (Delta Levees Investment Strategy Priorities) of Section 5012 of this title and depicted in Appendix P to the Delta Plan.

(tt) "Special status species" means either of the following:

- (1) Meets the definition of endangered, rare, or threatened species as defined in California Code of Regulations, title 14, section 15380.
- (2) Is designated a species of special concern by the Department of Fish and Wildlife.

(uu) "SWP" means the State Water Project operated by the Department of Water Resources.

~~(#)~~(vv) "Urban area" means a developed area in which there are 10,000 residents or more.

~~(mm)~~(ww) "Urbanizing area" means a developed area or an area outside of a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

~~(nn)~~(xx) “Urban water management plan” means a plan prepared, adopted, and updated by an urban water supplier pursuant to the Urban Water Management Planning Act, Water Code section 10610 et seq.

~~(oo)~~(yy) “Urban water supplier” refers to both “urban retail water suppliers” and “urban wholesale water suppliers”:

(1) “Urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

(2) “Urban wholesale water supplier” means a water supplier, either publicly or privately owned, that provides more than 3,000 acre-feet of potable water annually at wholesale for municipal purposes.

(zz) “Very-High Priority islands or tracts” means the tracts of land identified under “Very-High Priority” in the Table (Delta Levees Investment Strategy Priorities) of Section 5012 of this title and depicted in Appendix P to the Delta Plan.

~~(pp)~~(aaa) “Water supplier” refers to both “urban water suppliers” and “agricultural water suppliers,” but for purposes of section 5003, does not include agricultural water suppliers during the time that they may be exempted by section 10853 of the Water Code from the requirements of Parts 2.55 and 2.8 of Division 6 of the Water Code.

NOTE: Authority cited: Sections 85210, 85225.30 and 85306, Water Code. Reference: Section 15380, California Code of Regulations; Section 65040.12, Government Code; Section 1361, Fish and Game Code; Section 39711, Health and Safety Code; Section 21050, Public Resources Code; and Sections 10608.12, 10853, 11100, 85020, 85052, 85053, 85054, 85057.5, 85058, 85059, 85066, 85200, 85225, 85300, 85302 and 85308, Water Code.

Detailed Findings to establish consistency with the Delta Plan (Section 5002)

(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.

(b) Certifications of consistency must include detailed findings that address each of the following requirements:

(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 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;

(3) As relevant to the purpose and nature of the project, all covered actions must document use of best available science;

(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:

(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.

(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 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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85225, 85225.10, 85020, 85054, 85302(g) and 85308, Water Code.

Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance (5003)

(a) Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:

(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 consistent with all of the requirements listed in paragraph (1) of subsection (c);

(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.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001~~(j)~~(o)(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.

(c)(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:

(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).

(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 10608, 10610.2, 10610.4, 10801, 10802, 85001(c), 85004(b), 85020(a), 85020(d), 85020(h), 85021, 85022(d)(1), 85022(d)(5), 85023, 85054, 85300, 85302(d), 85303 and 85304, Water Code.

Transparency in Water Contracting (5004)

(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.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001~~(j)~~(o)(1)(E) of this chapter, this policy covers the following:

(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

(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85021, 85300 and 85302, Water Code.

Delta Flow Objectives (Section 5005)

(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.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001~~(j)~~(o)(1)(E) of this chapter, the policy set forth in subsection (a) covers a proposed action that could significantly affect flow in the Delta.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85054, 85086, 85087, 85300 and 85302, Water Code.

Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits (Section 5005.1)

(a) A complete certification of consistency for a covered action subject to this section shall disclose and include both of the following documents:

(1) Appendix 3A, Section 1, which requires all of the following:

(A) Demonstration if the covered action has one or more of the priority attributes.

(B) Disclosure of the covered action's contribution to the restoration of a resilient, functioning Delta ecosystem.

(C) Identification of the Ecosystem Restoration Tier identified in Appendix 3A, Section 2, that is associated with the covered action based on the listed priority attributes.

(2) Appendix 3A, Section 2, which requires both of the following:

(A) Identification of the social benefits that would be provided by the covered action.

(B) Disclosure of supporting information in the categories of cultural benefits, recreational benefits, agricultural benefits, and natural resource benefits.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(o)(1)(E) of this chapter, this policy applies to a covered action that includes protection, enhancement, or restoration of the ecosystem.

NOTE: Authority cited: Section 85210, Water Code. Reference: Sections 85020, 85022, 85054, 85210(h), 85300, 85302, 85308, Water Code.

Restore Habitat at Appropriate Elevations (Section 5006)

~~(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.~~

(a) A complete certification of consistency for a covered action subject to this section shall disclose and include all of the documentation required by Appendix 4A, which includes all of the following:

(1) A completed Appendix 4A.

(2) The rationale, based on best available science, for any inconsistency with Appendix 4A, Table 1.1, and how that covered action is nevertheless consistent with the coequal goals of the Delta Plan.

(3)(A) An explanation, based on best available science, for a covered action that takes place in whole or in part in the Intertidal Elevation Band and Sea Level Rise Accommodation Band, of how the action is designed to accommodate each of the following:

- (i) Future marsh migration.
- (ii) Anticipated sea level rise.
- (iii) Tidal inundation.

(B) If the action described in this paragraph does not implicate one or more of the elements set forth in subparagraph (A), explain for each of those elements why it does not.

(C) The information required to be provided pursuant to this paragraph may be included in an adaptive management plan if a plan is required pursuant to section 5002.

(4)(A) An explanation based on best available science, for a covered action that takes place in whole or in part in the shallow Subtidal Elevation Band or the Deep Subtidal Elevation Band, of how the action is designed to safeguard against levee failure over the design life of the covered action.

(B) The information required to be provided pursuant to this paragraph may be included in an adaptive management plan if a plan is required pursuant to section 5002.

(b)(1) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(o)(1)(E) of this chapter, this policy covers a proposed action that includes habitat restoration.

(2) For a covered action that had a Notice of Preparation, Mitigated Negative Declaration or Negative Declaration published prior to the effective date of the changes made to this section, those changes shall become operative two years after the effective date of those changes.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85022, 85054, 85210(h), 85300, 85302, 85308, Water Code.

Protect Opportunities to Restore Habitat (Section 5007)

(a)(1) 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~~ shall be avoided or mitigated.

~~(b)(2) Impacts referenced in subsection (a) will~~ Any impacts described in paragraph (1) shall be deemed to be avoided or mitigated if the project is covered action as designed and implemented so that it will ~~would~~ 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.~~

(3) If the impacts referenced in paragraph (1) are mitigated rather than avoided, those impacts shall be mitigated to the extent that the project has no significant impact on the opportunity to restore habitat as described in section 5006.

~~(d)~~(b)(1) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(o)(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.

(2) For a covered action that had a Notice of Preparation, Mitigated Negative Declaration or Negative Declaration published prior to the effective date of the changes made to this section, those changes shall become operative two years after the effective date of those changes.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85022, 85054, 85300, 85302 and 85305, Water Code.

Expand Floodplains and Riparian Habitats in Levee Projects (Section 5008)

~~(a) Levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. Evaluation of setback levees in the Delta shall be required only in the following areas (shown in Appendix 8):~~

~~(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.~~

~~(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(5)(1)(E) of this Chapter, this policy covers a proposed action to construct new levees or substantially rehabilitate or reconstruct existing levees.~~

(a)(1) A certification of consistency for a project subject to this section that is located in the setback levee evaluation areas depicted in Appendix 8A shall evaluate, and the levee project where feasible shall incorporate, alternatives that would increase floodplains and riparian habitats.

(2) For purposes of this paragraph, Appendix 8A depicts the Sacramento River between the Deepwater Ship Channel and Steamboat Slough, the San Joaquin River from the Stanislaus River confluence to Rough and Ready Island, the Stanislaus River, the Cosumnes River, Middle River, Old River, Paradise Cut, Elk Slough, Sutter Slough, and the North and South Forks of the Mokelumne River.

(b) A certification of consistency for a project subject to this section that is an urban levee improvement project in the cities of Sacramento or West Sacramento shall evaluate alternatives that would modify all or a portion of the original levee prism to physically expand the width of the channel.

(c)(1) For purposes of Water Code section 85057.5(a)(3) and section 5001(i)(o)(1)(E) of this chapter, this policy covers a proposed action that includes any of the following:

(A) Constructing a new flood control work.

(B) Making permanent a structural change or improvement that enhances the function of a flood control work.

(C) Changing the level of protection of a flood control work.

(D) Adapting a flood control work for new or different use.

(2) For a covered action that had a Notice of Preparation, Mitigated Negative Declaration or Negative Declaration published prior to the effective date of the changes made to this section, those changes shall become operative two years after the effective date of those changes.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85022, 85054, 85300, 85302 and 85305, Water Code.

Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species (Section 5009)

(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 50014(d)(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85054, 85300 and 85302, Water Code.

Locate New Urban Development Wisely (Section 5010)

(a) New residential, commercial, and industrial development must be limited to the following areas, as shown in Appendix 6 and Appendix 7:

- (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 the land uses designated in county general plans as of May 16, 2013, and is otherwise consistent with this chapter.

(c) For purposes of Water Code section 85057.5(a)(3) and section 50014(d)(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.

(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85022, 85300, 85302 and 85305, Water Code.

Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats (Section 5011)

(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.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001~~(j)~~(o)(1)(E) of this chapter, this policy covers proposed actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85022, 85054, 85300 and 85305, Water Code.

Prioritization of State Investments in Delta Levees and Risk Reduction (Section 5012)

(a) Fund levee operation and maintenance. For the purposes of Water Code Section 85306, State investments in levee operation and maintenance of Delta project levees and nonproject levees shall be prioritized as follows:

(1) For project levees, funding should be prioritized to ensure levees are operated and maintained in accordance with Code of Federal Regulations, Title 33, Part 208.10 and applicable federal Operation and Maintenance manuals, active in federal Public Law 84-99 Rehabilitation Program, and consistent with Central Valley Flood Protection Board Resolution No. 2018-06 for Acceptable Operation and Maintenance of the State Plan of Flood Control.

(2) For nonproject levees, funding should be prioritized to ensure levees are operated and maintained to protect the Delta's physical characteristics.

(b) Delta levees investment strategy. The priorities listed in the Table 1 below and depicted in Delta Plan Appendix P dated August 2021, which is incorporated by reference, shall guide State discretionary investments in the improvement of Delta levees. The California Department of Water Resources' funding decisions are subject to its consideration of the benefits, costs, engineering considerations, and other factors. As the California Department of Water Resources selects levee improvement projects for funding through its levee funding programs, it should fund projects at the Very-High priority islands or tracts, before funding projects at High Priority or Other Priority islands or tracts. If available funds are sufficient to fully fund levee improvement projects at the Very-High Priority islands or tracts, then funds for levee improvement projects on High Priority islands or tracts should be funded and after those projects have been fully funded, then levee improvement projects at Other Priority islands or tracts may be funded.

Table 1: Delta Levees Investment Strategy Priorities

Very High Priority	Bacon Island, Bethel Island, Bishop/DLIS-14 (North Stockton), Brannan-Andrus, Byron Tract, DLIS-19 (Grizzly Slough Area), DLIS-28, DLIS-33, DLIS-63 (Grizzly Island Area), Drexler Tract, Dutch Slough, Hastings Tract, Hotchkiss Tract, Jersey Island, Jones Tract (Upper and Lower), Maintenance Area 9 North, Maintenance Area 9 South, McCormack-Williamson Tract, McDonald Island, McMullin Ranch, Middle and Upper Roberts Island, New Hope Tract, North Stockton, Paradise Junction, Reclamation District 17, Ryer Island, Sherman Island, Staten Island, Terminous Tract, Twitchell Island, Union Island West, Upper Andrus Island, Victoria Island, Webb Tract.
High Priority	Bouldin Island, Brack Tract, Bradford Island, Cache Haas Area, Central Stockton, Clifton Court Forebay, DLIS-01 (Pittsburg Area), DLIS-07 (Knightsen Area), DLIS-08

	(Discovery Bay Area), DLIS-20 (Yolo Bypass), DLIS-22 (Rio Vista), DLIS-26 (Morrow Island), DLIS-29, DLIS-30, DLIS-31 (Garabaldi Unit), DLIS-32, DLIS-39, DLIS-41 (Joice Island Area), DLIS-44 (Hill Slough Unit), DLIS-55, DLIS-59, Egbert Tract, Fabian Tract, Glanville, Grand Island, Holland Tract, Honker Bay, Kasson District, Libby McNeil, Little Egbert Tract, Lower Roberts Island, Mandeville Island, Mossdale Island, Netherlands, Palm-Orwood, Paradise Cut, Pearson District, Pescadero District, Rindge Tract, River Junction, Shima Tract, Stewart Tract, Sunrise Club, Tyler Island, Union Island East, Veale Tract, Walnut Grove, Woodward Island, Yolano.
Other Priority	Atlas Tract, Bixler Tract, Canal Ranch Tract, Chipps Island, Coney Island, Dead Horse Island, DLIS-06 (Oakley Area), DLIS-10, DLIS-15, DLIS-17, DLIS-18, DLIS-25, DLIS-27, DLIS-34, DLIS-35, DLIS-36, DLIS-37 (Chadbourne Area), DLIS-40, DLIS-43 (Potrero Hills Area), DLIS-46, DLIS-47, DLIS-48, DLIS-49, DLIS-50, DLIS-51, DLIS-52, DLIS-53, DLIS-54, DLIS-56, DLIS-57, DLIS-62, Drexler Pocket, Ehrhardt Club, Empire Tract, Fay Island, Glide District, Holt Station, Honker Lake Tract, King Island, Lisbon District, Medford Island, Mein's Landing, Merritt Island, Peters Pocket, Pico-Nagle, Prospect Island, Quimby Island, Randall Island, Rio Blanco Tract, Rough And Ready Island, Shin Kee Tract, Stark Tract, Sutter Island, Venice Island, Walthall, West Sacramento, Wetherbee Lake, Winter Island, Wright-Elmwood Tract.

(c) Annual Report.

(1) The California Department of Water Resources shall submit a written annual report, as described in paragraph (2), to the Council, as well as present the report to the Council, on State funds distributed or provided by the California Department of Water Resources within the legal Delta. At least 45 days prior to the oral presentation before the Council, and no later than March 1 of each calendar year, the California Department of Water Resources shall submit the written annual report to the Council and make the report publicly available.

(2) The report shall include:

(A) A description of all discretionary State funding for levees awarded by the California Department of Water Resources, during the reporting year; including both of the following:

(i) Levee improvement.

(ii) Levee operation and maintenance.

(B) A list of each levee improvement project proposal submitted to the California Department of Water Resources for funding, regardless of whether the California Department of Water Resources awarded funding to the project;

(C) A list of the improvement projects awarded funding, the funding level awarded, the local cost share, and the applicable priority of the island or tract from Table 1 in subsection (b), where the levee improvement project is located;

(D) A description, for each awarded project, of changes (when completed) to levee geometry, the specific locations of those changes, and expected changes in the level of flood protection provided or standard achieved;

(E) If the California Department of Water Resources awards funds for any levee improvement project that is inconsistent with the priorities identified in subsection (b), the annual report shall identify for each project: how the funding is inconsistent with the priorities, describe why variation from the priorities is necessary, and explain how the funding nevertheless protects

lives, property, or other State interests, such as infrastructure, agriculture, water supply reliability, Delta ecosystem, or Delta communities;

(F) A summary of the California Department of Water Resources' rationale for levee improvement project proposals submitted, but not awarded funding during the reporting year; and

(G) A summary of all previous California Department of Water Resources funded levee improvement project activities completed during the reporting year and location of those activities.

(d) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(o)(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.

NOTE: Authority cited: Sections 85210 and 85306, Water Code. Reference: Sections 85020, 85022, 85054, 85057.5, 85300, 85305, 85306, 85307 and 85309, Water Code.

Require Flood Protection for Residential Development in Rural Areas (Section 5013)

(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:

- (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
- (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in Appendix 7.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(o)(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).

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85300, 85305 and 85306, Water Code.

Protect Floodways (Section 5014)

(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.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(o)(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85300, 85302 and 85305, Water Code.

Floodplain Protection (Section 5015)

(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:

- (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 Council, March 2011. This area may be modified in the future through the completion of this project.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001~~(j)~~(g)(1)(E) of this chapter, this policy covers a proposed action that would encroach in any of the floodplain areas described in subsection (a).

(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.

NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85300, 85302 and 85305, Water Code.