

**State of California Delta
Stewardship Council**

**California Code of Regulations, Title 23. Water Division 6. Delta
Stewardship Council**

**Article 1. Definitions Section 5001. Definitions
and**

**Article 3. Consistency with the Regulatory Policies Contained in the Delta
Plan Section 5012. Prioritization of State Investments in Delta Levees and
Risk Reduction**

Proposed Amendment to Existing Regulation

Amend California Code of Regulations, Title 23, section 5001 and section 5012 as follows:

Note: Red text indicates changes proposed by staff to the regulation that was approved by the Council for rulemaking in April 2018.

[Note: Set forth below are proposed amendments to Title 23 of the California Code of Regulations. 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. All other portions remain unchanged and are indicated by the symbol “* * * *” for reference.]

[Note for using screen readers: (μ) is used only to identify the following word / letter as an addition. When (μ) is used, followed by a (End (μ)), this identifies that entire portion of text or paragraph as an addition. (β) is used only to identify the following word / letter as a deletion. When (β) is used, followed by a (End (β)), this identifies that entire portion of text or paragraph as a deletion.]

§ **5001. Definitions.** As used in this division, the terms listed below shall have the meanings noted:

* * * *

(μ) (v) “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. (end μ)

(μ) (w) “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, increasing the height of a levee, providing riprap where none previously existed, and other similar activities. levee improvements intended to reduce the probability of flooding. An example of a levee improvement would be changing a~~ ~~levee geometry to reach a higher level of protection. (end μ)~~

(x) “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.

~~(u) (x) “Levee maintenance” means annual or routine levee maintenance work intended to preserve the levee system in its current condition. Examples of maintenance work include patrols, surveys and inspections, extermination and control of burrowing animals, work on the levee crown to improve access or drainage, removing vegetation or debris, control of seepage and boils, cleaning drains and toe ditches, restoring rock protection, and maintenance of levee-related habitat improvement sites. (end u)~~

~~(u) (y) “Levee rehabilitation” means levee repair work needed to restore the levee integrity and preserve existing flood risk reduction benefits. Examples of rehabilitation work include raising the levee crown to offset subsidence, flattening waterside slopes, constructing landside berms, and widening levee crowns. (end u)~~

(β) ~~(v)~~ (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.

(β) ~~(w)~~ (aa) “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).

(u) (bb) “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. (end u)

(β) ~~(x)~~ (cc) “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).

(β) ~~(y)~~ (dd) “Proposed action” means a plan, program, or project that meets the covered action screening criteria listed in section 5001(j)(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(j)(1)(E).

(β) ~~(z)~~ (ee) “Protection” or “protecting,” for purposes of section 5001(h)(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.

(β) ~~(aa)~~ (ff) “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.

(β) ~~(bb)~~ (u) ~~(gg)~~ “Restoration” or “restoring,” for purposes of section 5001(h)(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.

(β) ~~(cc)~~ (u) ~~(hh)~~ “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.

(β) ~~(dd)~~ (u) ~~(ii)~~ “Significant impact” for the purpose of determining whether a project meets the definition of a “covered action” under section 5001(j)(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).

(u) (j) “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. (end (u))

(β) ~~(ee)~~ (u) ~~(kk)~~ “Urban area” means a developed area in which there are 10,000 residents or more.

(β) ~~(ff)~~ (u) ~~(ll)~~ “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.

(β) ~~(gg)-(μ)~~ ~~(mm)~~ “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.

(β) ~~(hh)-(μ)~~ ~~(nn)~~ “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.

(β) ~~(ii)-(μ)~~ ~~(oo)~~ “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.11

Note: Authority cited: Sections 85210(i), ~~(μ)~~ 85210(h), and 85306 ~~(end μ)~~ Water Code. Reference: Sections 85057.5, 85059, 85058, 85066, 85020, 85054, 85052, 85302(g), 85308, 85300, 10608.12 and 10853, Water Code.

§ 5012. Prioritization of State Investments in Delta Levees and Risk Reduction.

~~(β) (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).~~

~~(1)Delta Emergency Preparedness, Response, and Recovery: Develop and implement appropriate emergency preparedness, response, and recovery strategies, including those developed by the Delta Multi-Hazard Task Force pursuant to Water Code section 12994.5.~~

~~(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. (end β)~~

(β) Priorities for State Investment in Delta Integrated Flood Management Categories of Benefit Analysis

β-Goals	β-Localized Flood Protection	β-Levee Network	β-Ecosystem Conservation
4	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. (end β)	Protect cultural, historic, aesthetic, and recreational resources (Delta as end β)	Protect existing and provide for net enhancements of wetlands. (end β)

~~(u) (a) Fund levee maintenance. Funding for levee maintenance shall continue to be available throughout the Delta where authorized by Water Code section 12980 et seq. (end u)~~

~~(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, 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.~~

~~(u) (b) Delta levees investment strategy.~~

~~(1) Prioritize levee improvements. The priorities listed in the Table below~~

shall guide state discretionary investments in the improvement and rehabilitation of Delta levees. As the California Department of Water Resources selects levee improvement ~~or levee rehabilitation~~ projects for funding through its levee funding programs, it should fund projects at the Very-High Priority islands or tracts as identified in Table 1 and depicted in Delta Plan Appendix P dated [XXXX], which Appendix P is incorporated herein by this reference as if fully set forth, subject to consideration of the benefits, costs, engineering considerations, and other factors, before ~~approving funding~~ projects at High Priority islands or tracts or Other Priority islands or tracts. If available funds are sufficient to fully fund levee improvement ~~and levee rehabilitation~~ projects at the Very-High Priority islands or tracts, then funds for levee improvement ~~or levee rehabilitation~~ projects on High Priority islands or tracts ~~may should~~ be provided, and after those projects have been fully funded, then levee improvement ~~or levee rehabilitation~~ projects at Other Priority islands or tracts may be funded.(end μ) (μ)

Table 1: Delta Levees Investment Strategy Priorities

~~(u) (2) Annual Report.~~

~~(A) The California Department of Water Resources shall submit a written annual report to the Council, as well as present the report to the Council, identifying decisions to award State funds for Delta levee improvement and levee rehabilitation projects, including the location of each funded levee improvement, the priority of the funded islands or tracts, the levee improvements funded, including the relevant levee improvement type, habitat mitigation or enhancement features, estimated reduction in levee fragility, expected reduction in annual fatalities and damages, State funds awarded, and local or federal matching~~

~~funds. At least 30 days prior to the oral presentation before the Council, the California Department of Water Resources shall submit the written annual report to the Council and make the report publicly available. (end μ)~~

~~(μ) (B) When the California Department of Water Resources' contributions towards levee improvements and levee rehabilitation vary from the priorities identified in (b)(1), the annual report shall identify 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, and the State's interests in water supply reliability and restoration, protection, and enhancement of the Delta ecosystem while considering the Delta's unique agricultural, natural, historic, and cultural values. (end μ)~~

~~β (b) (μ) (c) 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 (μ) in the improvement and rehabilitation of Delta levees (end μ) β in Delta flood risk management, including levee operations, maintenance, and improvements. (end β) Nothing in this policy establishes or otherwise changes existing levee standards.~~

(c) Annual Report.

(1) The California Department of Water Resources shall submit a written annual report 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 for levee operation, maintenance, repair, rehabilitation, replacement, and improvement projects within the legal Delta. At least 45 days prior to the oral presentation before the Council, 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 State funds provided for each levee operation, maintenance, repair, rehabilitation, replacement, and improvement program funded during the reporting year;

(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 paragraph (b)(1) 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;

(D) If the California Department of Water Resources awards funds for any levee improvement project that is inconsistent with the priorities identified in

paragraph (b)(1), 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; and

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

(F) 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)(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(i) (μ), 85210(h), and 85306 (end μ) Water Code. Reference: Sections 85020, (μ) 85022, 85054, 85057.5 (end μ), 85300, 85305 and 85306, (μ) 85307, and 85309 (end μ) Water Code.

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