

Proposed Amendment to Existing Regulation
State of California
Delta Stewardship Council
California Code of Regulations, Title 23. Water Division 6. Delta
Stewardship Council

Article 1. Definitions Section 5001. Definitions.

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

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

[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.]

[Note: This document specifically compares the version of the regulatory text adopted in April 2018 and the proposed regulatory text, highlighted text indicates a difference between the two documents. (γ) is used only to identify the following word/letter as highlighted text. When (γ) is used, followed by a (end (γ)), this identifies an entire portion of text or paragraph as highlighted.]

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

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(γ) (μ) (γ) “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 (γ))
(end (μ))

(γ) (μ) (γ) (w) (end (γ)) “Levee improvement” means levee improvements intended to reduce the probability of flooding. An example of a levee improvement would be changing a levee geometry (γ) (β) to meet a higher levee as improving a levee (end (β)) (end (γ)) (μ) to reach a (end (μ)) (γ) (β) 200-year (end (β)) (μ) higher (end (γ)) (μ) level of protection. (end (μ))

(γ) (β) ~~(w)~~ (μ) (x) (end (γ)) “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 habit (γ) (β) improvements improvement (end (γ)) sites. (end (μ))

(γ) (β) ~~(x)~~ (μ) (y) (end (γ)) “Levee rehabilitation” means levee repair work needed to (γ) (β) improve restore (end (γ)) 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 (μ))

(γ) (β) ~~(y)~~ (μ) (z) (end (γ)) “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.

(γ) (β) ~~(w)~~ (μ) (aa) (end (γ)) “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).

(μ) (γ) (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 (γ)) (end (μ))

(γ) (β) ~~(x)~~ (μ) (cc) (end (γ)) “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).

(γ) (β) ~~(y)~~ (μ) (dd) (end (γ)) “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).

(γ) (β) ~~(z)~~ (μ) (ee) (end (γ)) “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.

(γ) (β) ~~(aa)~~ (μ) ~~(ff)~~ (end (γ)) “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.

(γ) (β) ~~(bb)~~ (μ) ~~(gg)~~ (end (γ)) “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.

(γ) (β) ~~(cc)~~ (μ) ~~(hh)~~ (end (γ)) “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.

(γ) (β) ~~(dd)~~ (μ) ~~(ii)~~ (end (γ)) “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).

(γ) (μ) ~~(jj)~~ “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 ((γ)) (end ((μ))

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

(γ) (β) ~~(ff)~~ (μ) ~~(ll)~~ (end (γ)) “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.

(γ) (β) ~~(gg)~~ (μ) ~~(mm)~~ (end (γ)) “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.

(γ) (β) ~~(hh)~~ (μ) ~~(nn)~~ (end (γ)) “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.

((γ) (β) ~~(ii)~~ (μ) ~~(oo)~~ (end (γ)) “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: Section 85210(i), (γ) (μ) 85210(h), and 85306 (end ((μ)) (end (γ)) Water Code. Reference: Sections 85057.5, 85059, 85058, 85066, 85020, 85054, 85052, 85302(g), 85308, 85300, 10608.12 and 10853, Water Code.

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§ 5012. RR P1: 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 Department of Water Resources must balance achievement of those goals. Except on islands planned for ecosystem restoration, improvement of non-project 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 (P.L. 84-99), may be funded as befits the benefits to be provided, consistent with the Department of Water Resource’s current practices and any future adopted investment strategy.~~

Priorities for State Investment in Delta Integrated Flood Management

Categories of Benefit Analysis

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	Protect existing and provide for a net increase in channel-margin habitat.

		carry fresh water through the Delta.	
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. (end (β))

(end (β))

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

(γ)**b) Delta levees investment strategy**(end (γ))

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

Table 1: Delta Levees Investment Strategy Priorities

<p>(u) Very High Priority</p>	<p>Bethel Island, Bishop/DLIS-14 (North Stockton), Brannan-Andrus, Byron Tract, Central Stockton, Dutch Slough, Grand Island, Jersey Island, Maintenance Area 9 North, Maintenance Area 9 South, McCormack-Williamson Tract, North Stockton, Reclamation District 17, Sherman Island, Twitchell Island, Upper Andrus Island, West Sacramento (end u)</p>
<p>(u) High Priority</p>	<p>Bacon Island, Bouldin Island, Bradford Island, Clifton Court Forebay, DLIS-08 (Discovery Bay Area), DLIS-20 (Yolo Bypass), DLIS-22 (Rio Vista), DLIS-63 (Grizzly Island Area), Drexler Tract, Glanville, Hastings Tract, Holland Tract, Honker Bay, Honker Lake Tract, Hotchkiss Tract, Jones Tract (Lower And Upper), Little Egbert Tract, Mandeville Island, McDonald Island, Middle & Upper Roberts Island, Mossdale Island, New Hope Tract, Palm-Orwood, Paradise Cut, Paradise Junction, Pescadero District, Staten Island, Stewart Tract, Terminous Tract, Tyler Island, Union Island West, Victoria Island, Webb Tract, Woodward Island (end u)</p>
<p>(u) Other Priority</p>	<p>Atlas Tract, Bixler Tract, Brack Tract, Cache Haas Area, Canal Ranch Tract, Chipps Island, Coney Island, Dead Horse Island, DLIS-01 (Pittsburg Area), DLIS-06 (Oakley Area), DLIS-07 (Knightsen Area), DLIS-10, DLIS-15, DLIS-17, DLIS-18, DLIS-19 (Grizzly Slough Area), DLIS-25, DLIS-26 (Morrow Island), DLIS-27, DLIS-28, DLIS-29, DLIS-30, DLIS-31 (Garabaldi Unit), DLIS-32, DLIS-33, DLIS-34, DLIS-35, DLIS-36, DLIS-37 (Chadbourne Area), DLIS-39, DLIS-40, DLIS-41 (Joice Island Area), DLIS-43 (Potrero Hills Area), DLIS-44 (Hill Slough Unit), DLIS-46, DLIS-47, DLIS-48, DLIS-49, DLIS-50, DLIS-51, DLIS-52, DLIS-53, DLIS-54, DLIS-55, DLIS-56, DLIS-57, DLIS-59, DLIS-62, Drexler Pocket, Egbert Tract, Ehrhardt Club, Empire Tract, Fabian Tract, Fay Island, Glide District, Holt Station, Kasson District, King Island, Libby McNeil, Lisbon District, Lower Roberts Island, McMullin Ranch, Medford Island, Mein's Landing, Merritt Island, Netherlands, Pearson District, Peters Pocket, Pico-Naglee, Prospect Island, Quimby Island, Randall Island, Rindge Tract, Rio Blanco Tract, River Junction, Rough And Ready Island, Ryer Island, Shima Tract, Shin Kee Tract, Stark Tract, Sunrise Club, Sutter Island, Union Island East, Veale Tract, Venice Island, Walnut Grove, Walthall, Wetherbee Lake, Winter Island, Wright-Elmwood Tract, Yolano (end u)</p>

(y) (u) (2) Annual Report
 (b) _____ (end (y)) shall (y) (b) certify projects' consistency with this regulatory policy when its funding decisions _____ (end (b)) _____ (end (y)) report (y) (b) _____ to the Council, (y) _____ (b) _____ (end (b)) _____ (end (y)) decisions to award State funds for Delta levee improvement (y) (b) _____ (end (y)), including the location of each funded improvement, the priority of the (y) (b) _____ (end (y)) islands or tracts, the (y) _____ 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. (y) _____ (b) _____ (end (y)) (end (u))

(y) (β) ~~(e)~~ (μ) (B) (end (y)) When (y) (β) DWR's the California Department of Water Resources' (end (y)) contributions towards levee improvements (y) and rehabilitation (end (y)) vary from (y) (β) these the (end (y)) priorities (y) identified in (b)(1), the annual report (end (y)) shall identify how the funding is inconsistent with (y) priorities (β) this guidance (end (β)), (end (y)) 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. (y) (β) That determination is subject to review by the Delta Stewardship Council on appeal. (end (y)) (end (μ)) (end (β))

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

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

(μ) (β) Preliminary Draft Delta Levees Investment Priorities (end (μ)) (end (β))

