

State of California  
Delta Stewardship Council

Final Statement of Reasons for Amending  
California Code of Regulations, Title 23. Water  
Division 6. Delta Stewardship Council  
Chapter 2. Consistency with Regulatory Policies Contained in the Delta Plan  
Article 1. Definitions §5001. (dd) "Significant impact"  
(3). Temporary water transfers of up to one year in duration

Including Summary of Public Comments and Agency Responses

*Update of Initial Statement of Reasons*

The initial statement of reasons is included in the rulemaking file. There are no changes to the proposed amendment of the definition of "significant impact" for the purpose of determining whether a project meets the definition of a "covered action" within the meaning of the Delta Reform Act, Water Code section 85000 *et seq.* (Delta Reform Act). Temporary water transfers of up to one year in duration constitute one of the categories of projects determined not to have a significant impact and are therefore outside of the definition of a "covered action". This provision within the current regulation is in effect through December 31, 2016. The proposed amendment would remove this "sunset" date and make the determination of no significant impact for temporary water transfers of up to one year in duration, alternatively referred to as single-year water transfers. The proposed amendment would therefore have the effect of exempting single-year water transfers from review by the Delta Stewardship Council (Council) for consistency with regulatory policies contained in the Delta Plan.

*Proposed Amendment to the Existing Regulation*

The Council proposed to amend the existing definition of "significant impact" by eliminating the sunset date for the determination regarding single-year water transfers. That amendment would change the definition as follows:

*(dd) "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...*

*(3) Temporary water transfers of up to one year in duration. ~~This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the~~*

~~California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.~~

### ***Additional Document(s) Added to the Record***

In May 2016, the Council prepared an Addendum to the Delta Plan Final Programmatic Environmental Impact Report (Addendum) to address this proposed amendment. The Addendum was posted on the Council website for a 30-day public review period which ended on June 13, 2016. The May Addendum constitutes part of the technical studies and reports relied upon in this rulemaking, and is included in the rulemaking file. The Council subsequently finalized the Addendum in September 2016, which was noticed, added to the rulemaking file, and posted on the Council website on September 14, 2016, fifteen days prior to the September 29, 2016 public hearings on the Addendum and the proposed adoption of the amendment.

In addition, the following reference material were also noticed, added to the rulemaking file, and posted on the Council website on September 14, 2016:

1. Council meeting summaries and supporting material for the following meetings:
  - a. July 23-24, 2015
  - b. September 24, 2015
  - c. November 19, 2015
  - d. December 17, 2015
2. *November 2012 Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement*

The Council complied with the requirements pursuant to Section 11347.1 of the Government Code and included a statement to this effect in the rulemaking file.

### ***Local Mandate***

The proposed amendment will not impose a mandate on local agencies or school districts.

### ***Summary and Response to Comments***

Two written comments were received during the 45-day notice period from July 22, 2016 through September 6, 2016 on the proposed amendment. No additional comment, objection, or recommendation was received during the public hearing. Attachment 1 contains a summary of the comments received and responses to those comments.

*Determination on Alternatives*

The Council determined that no reasonable alternatives considered by the Council or that have otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**Attachment 1**

**Summary of Public Comments Received and Responses to Comment**

Name/Organization	Date	Summary of Comment	Response
Joseph Rizzi	Aug 4, 2016	Fish screens can and should be installed	Comment dismissed. The comment is not specifically directed at the Council's proposed action or to the procedures followed by the Council in proposing or adopting the action.
Hicham Eltal, Merced Irrigation District	Sep 6, 2016	Support the Council's proposed action	Comment noted.