



DELTA STEWARDSHIP COUNCIL
A California State Agency

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October 19, 2012

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Jeffrey and Cara Cavanaugh
GreenLeaf Conservation and Mitigation Services
Via Email: jeff-cavanaugh@hotmail.com

Dear Mr. and Ms. Cavanaugh:

Your project prospectus for Mallard Farms Conservation Bank in the Suisun Marsh was forwarded to Delta Stewardship Council Chair Phil Isenberg, who, in turn, forwarded it to staff for preliminary review on October 1, 2012. As we discussed in our phone conversation on October 8, 2012, we would welcome the opportunity to meet with you and staff of other relevant state agencies at your convenience to discuss the project.

As you may know, the Delta Stewardship Council was created by the Delta Reform Act of 2009. (For the purposes of the Act, the "Delta" refers to the Legal Delta and the Suisun Marsh.) The Council's job is to develop and implement a legally enforceable, long-term management plan for the Delta to achieve the coequal goals of protecting and enhancing the Delta ecosystem, and providing for a more reliable water supply for California in a manner that protects and enhances the Delta as an evolving place.

The latest draft Delta Plan (September 5, 2012) calls for restoring habitat in six high priority locations: the Yolo Bypass, Cache Slough Complex, Cosumnes River–Mokelumne River confluence, lower San Joaquin River floodplain, Suisun Marsh and the Western Delta. Restoration must be carried out consistent with the California Department of Fish and Game's (DFG's) *Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions* (DFG 2011).

The Council is scheduled to review and approve the final Delta Plan in spring 2013. Once the Delta Plan is approved, a state or local agency that proposes to undertake a significant action in the Delta that meets certain criteria (a "covered action") will have to certify that the action is consistent with the Delta Plan. Any person who claims that a proposed covered action is inconsistent with the Delta Plan may bring an appeal to the Council. The Council, in turn, must hold a hearing on the appeal and issue written findings, either denying the appeal or sending the matter back to the state or local agency for reconsideration.

"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."

– CA Water Code §85054

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The process for certifying a covered action's consistency with the Delta Plan is prescribed in the Delta Reform Act, including Water Code 85057.5 and 85225. A key feature of the Act's consistency certification process is that the determination of whether a project is a covered action (which necessitates the filing of a certification of consistency) is made by the state or local agency that approves, funds, or carries out the project, rather than the Delta Stewardship Council. The Council's role, as provided in Water Code Section 85225.5, is to assist state and local agencies in preparing a certification through early consultation on a proposed action.

Another role of the Council, through the Delta Science Program, is to provide technical review of habitat restoration projects. The Delta Science Program can advise project proponents to help them ensure that their habitat restoration project is consistent with DFG's *Conservation Strategy*, uses the best available science in its design, considers anticipated changes in the Delta, and uses adaptive management.

We would suggest that you take a look at the enclosed excerpts from the draft Delta Plan regarding covered actions and Delta Plan consistency.

We look forward to meeting with you and representatives of other relevant states agencies, such as DFG and the San Francisco Bay Conservation and Development Commission, and will contact you to schedule a meeting at your convenience. If you have any questions or need additional information prior to our meeting, please contact Jessica Davenport, Senior Planner, at (916) 445-2168 or Jessica.Davenport@deltacouncil.ca.gov.

Sincerely,



Cindy Messer
Acting Deputy Director, Delta Plan

cc: Phil Isenberg, Chair, DSC
DSC Council Members
Chris Knopp, Executive Director, DSC
Dan Ray, Chief Deputy Executive Officer, DSC
Carl Wilcox, DFG
Joe LaClair, Chief Planner, BCDC
Brian Hansen, U.S. Fish and Wildlife Service

Enc. Excerpts from the Draft Delta Plan (September 5, 2012)

Delta Plan Policies and Recommendations

The Delta Plan contains a set of regulatory policies that will be enforced by the Delta Stewardship Council’s appellate authority and oversight, described in Chapter 2. The Delta Plan also contains priority recommendations, which are nonregulatory but call out actions essential to achieving the coequal goals.

The following table has been added since the May 14, 2012 draft to show changes in policy and recommendation language.

POLICY OR RECOMMENDATION NUMBER	SHORT TITLE	POLICY/RECOMMENDATION LANGUAGE
Chapter 2		
G P1	Detailed Findings to Establish Consistency with the Delta Plan	<p>a) This policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to a covered action. This policy only applies after a “proposed action” has been determined by a State or local public agency to be a covered action because it among other things is covered by one or more of the policies contained in Chapters 3 through 7. Inconsistency with this policy may be the basis for an appeal.</p> <p>b) Certifications of Consistency must include detailed findings that address each of the following requirements:</p> <ul style="list-style-type: none"> ◆ Covered actions must be consistent with the coequal goals, as well as with each of the policies contained in Chapters 3 through 7 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 policies may not be feasible. In those cases, the agency that files the certification of consistency may determine that the covered action is consistent with the Delta Plan. That determination must include a clear identification of areas where consistency 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. ◆ Covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan’s Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the proposing agency), or substitute mitigation measures that the proposing agency finds are equally or more effective. ◆ As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Appendix A).

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		<ul style="list-style-type: none"> ◆ 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: <ul style="list-style-type: none"> • An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix A, and • Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process. ◆ If the agency that files the certification of consistency will carry out the covered action, the certification of consistency must also include a certification from that agency that the covered action complies with all applicable laws pertaining to water resources, biological resources, flood risk, and land use and planning. If the agency that files the certification of consistency will not carry out the covered action (but will approve or fund the action), the certification of consistency must include a certification from that agency that the covered action complies with all applicable laws of the type listed above over which that agency has enforcement authority or with which that agency can require compliance.
G R1	Development of a Delta Science Plan	<p>The Delta Stewardship Council's Delta Science Program should develop a Delta Science Plan by December 31, 2013. The Delta Science Program should work with the Interagency Ecological Program, Bay Delta Conservation Plan, California Department of Fish and Game and other agencies to develop the Delta Science Plan. To ensure that best science is used to develop the Delta Science Plan, the Delta Independent Science Board should review the draft Delta Science Plan.</p> <p>The Delta Science Plan should address the following:</p> <ul style="list-style-type: none"> ◆ A collaborative institutional and organizational structure for conducting science in the Delta ◆ Data management, synthesis, scientific exchange and communication strategies to support adaptive management and improve the accessibility of information ◆ Strategies for addressing uncertainty and conflicting scientific information ◆ The prioritization of research and balancing of the short-term immediate science needs with science that enhances comprehensive understanding of the Delta system over the long term ◆ Identification of existing and future needs for refining and developing numerical and simulation models along with enhancing existing Delta conceptual models (e.g., the Interagency Ecological Program (IEP) Pelagic Organism Decline (POD) and the Delta Regional Ecosystem Restoration Implementation Plan (DRERIP) models) ◆ Recommendations on an integrated approach for monitoring that incorporates existing and future monitoring efforts

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- ◆ An assessment of financial needs and funding sources to support science

Chapter 3

WR P1	Reduce Reliance on the Delta and Improve Regional Self Reliance	<p>The policy of the State of California is to reduce reliance on the Delta in meeting future water supply needs and that each region that depends on water from the Delta watershed shall improve its regional self-reliance. Success in achieving the statewide policy of reduced reliance on the Delta and improving regional self-reliance will be demonstrated through a significant reduction in the amount of water used, or in the percentage of water used, from the Delta watershed.</p> <p>The intent of WR P1 is to ensure that urban and agricultural water suppliers are taking appropriate actions to contribute to the achievement of reduced reliance on the Delta by complying with the statutory requirements of SB X7 7 and other water management laws, and by implementing programs and projects that are locally cost effective and technologically feasible for urban and agricultural water suppliers to increase water use efficiency and conservation and diversify local water supply portfolios.</p> <p>WR P1: Water shall not be exported from, transferred through or used in the Delta if (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 the three requirements stated below; (2) that failure has significantly caused the need for the export, transfer or use; and (3) the export, transfer or use would have a significant adverse environmental impact in the Delta.</p> <p>For the purpose of Water Code section 85057.5 (a) (3), this policy covers a proposed action to export water from, transfer water through, or use water in the Delta.</p> <p>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 WR P1:</p> <ol style="list-style-type: none"> 1) Completed a current urban or agricultural water management plan which has been reviewed by DWR for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8; 2) Identified, evaluated and commenced implementation, consistent with the implementation schedule set forth in the management plan, of all programs and projects that are locally cost effective and technically feasible that reduce reliance on the Delta; and 3) Included in the plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. <p>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 projects, and improved regional coordination of local and regional water supply efforts.</p>
WR R1	Implement Water Efficiency and Water Management Planning Laws	<p>All water suppliers should fully implement applicable water efficiency and water management laws, including urban water management plans (Water Code section 10601 et seq.), the 20% reduction in statewide urban per capita water usage by 2020 (Water Code section 10608 et seq.), agricultural water management plans (Water Code section 10608 et seq.), and other applicable water laws, regulations, or rules.</p>
WR R2	Require SWP Contractors to Implement Water Efficiency and	<p>The Department of Water Resources should include a provision in all State Water Project contracts, contract amendments, contract renewals, and water transfer agreements that require the implementation of all State water efficiency and water</p>

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	Water Management Laws	management laws, goals, and regulations, including compliance with Water Code section 85021.
WR R3	Compliance with Reasonable and Beneficial Use	The State Water Resources Control Board should evaluate all applications and petitions for a new water right or a new or changed point of diversion, place of use, or purpose of use that would result in new or increased long-term average use of water from the Delta watershed for consistency with the constitutional principle of reasonable and beneficial use. The State Water Resources Control Board should conduct its evaluation consistent with Water Code sections 85021, 85023, 85031, and other provisions of California law. An applicant or petitioner should submit to the State Water Resources Control Board sufficient information to support findings of consistency, including, as applicable, its urban water management plan, agricultural water management plan, and environmental documents prepared pursuant to CEQA.
WR R4	Expanded Water Supply Reliability Element	Water suppliers that receive water from the Delta watershed should include an expanded water supply reliability element, starting in 2015, as part of the update of an urban water management plan, agricultural water management plan, integrated water management plan, or other plan that provides equivalent information about the supplier's planned investments in water conservation and water supply development. The expanded water supply reliability element should detail how water suppliers are reducing reliance on the Delta and improving regional self-reliance consistent with Water Code section 85201 through investments in local and regional programs and projects, and should document the expected outcome for a measurable reduction in reliance on the Delta and improvement in regional self-reliance. At a minimum, these plans should include a plan for possible interruption of Delta water supplies up to 36 months due to catastrophic events, evaluation of the regional water balance, a climate change vulnerability assessment, and an evaluation of the extent to which the supplier's rate structure promotes and sustains efficient water use.
WR R5	Develop Water Supply Reliability Element Guidelines	The Department of Water Resources, in consultation with the Delta Stewardship Council, the State Water Resources Control Board, and others, should develop and approve, by December 31, 2014, guidelines for the preparation of a water supply reliability element so that water suppliers can begin implementation of WR R4 by 2015.
WR R6	Update Water Efficiency Goals	The Department of Water Resources and the State Water Resources Control Board should establish an advisory group with other state agencies and stakeholders to identify and implement measures to reduce impediments to achievement of statewide water conservation, recycled water, and stormwater goals by 2014. This group should evaluate and recommend updated goals for additional water efficiency and water resource development by 2018. Issues such as water distribution system leakage should be addressed. Evaluation should include an assessment of how regions are achieving their proportional share of these goals.
WR R7	Revise State Grant and Loan Priorities	The Department of Water Resources, the State Water Resources Control Board, the Department of Public Health, and other agencies, in consultation with the Delta Stewardship Council, should revise State grant and loan ranking criteria by December 31, 2013, to be consistent with Water Code section 85021 and to provide a priority for water suppliers that includes an expanded water supply reliability element in their adopted urban water management plans, agricultural water management plans, and/or integrated regional water management plans.
WR R8	Demonstrate State Leadership	All State agencies should take a leadership role in designing new and retrofitted State owned and leased facilities, including buildings and Caltrans facilities, to increase water efficiency, use recycled water, and incorporate stormwater runoff capture and low impact development strategies.
WR R9	Update Bulletin 118, California's Groundwater	The Department of Water Resources, in consultation with the Bureau of Reclamation, U.S. Geological Survey, the State Water Resources Control Board, and other

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	Plan	agencies and stakeholders should update Bulletin 118 information using field data, California Statewide Groundwater Elevation Monitoring (CASGEM), groundwater agency reports, satellite imagery, and other best available science by December 31, 2014, so that this information can be included in the next California Water Plan Update and be available for inclusion in 2015 urban water management plans and agricultural water management plans. The Bulletin 118 update should include a systematic evaluation of major groundwater basins to determine sustainable yield and overdraft status, a projection of California's groundwater resources in 20 years if current groundwater management trends remain unchanged, anticipated impacts of climate change on surface water and groundwater resources, and recommendations for State, federal, and local actions to improve groundwater management. In addition, the Bulletin 118 update should identify groundwater basins in a critical condition of overdraft.
WR R10	Implement Groundwater Management Plans in Areas that Receive Water from the Delta Watershed	Water suppliers that receive water from the Delta watershed and that obtain a significant percentage of their long-term average water supplies from groundwater sources should develop and implement sustainable groundwater management plans that are consistent with both the required and recommended components of local groundwater management plans identified by the Department of Water Resources Bulletin 118 (Update 2003) by December 31, 2014.
WR R11	Recover and Manage Critically Overdrafted Groundwater Basins	Local and regional agencies in groundwater basins that have been identified by the Department of Water Resources as being in a critical condition of overdraft should develop and implement a sustainable groundwater management plan, consistent with both the required and recommended components of local groundwater management plans identified by the Department of Water Resources Bulletin 118 (Update 2003), by December 31, 2014. If local or regional agencies fail to develop and implement these plans, the State Water Resources Control Board should take action to determine if the continued overuse of a groundwater basin constitutes a violation of the State's Constitution Article X, Section 2, prohibition on unreasonable use of water and whether a groundwater adjudication is necessary to prevent the destruction of or irreparable injury to the quality of the groundwater, consistent with Water Code sections 2100-2101.
WR R12	Complete Bay Delta Conservation Plan	The relevant federal, State, and local agencies should complete the Bay Delta Conservation Plan, consistent with the provisions of the Delta Reform Act, and receive required incidental take permits by December 31, 2014.
WR R13	Complete Surface Water Storage Studies	The Department of Water Resources should complete surface water storage investigations of proposed off-stream surface storage projects by December 31, 2012, including an evaluation of potential additional benefits of integrating operations of new storage with proposed Delta conveyance improvements, and recommend the critical projects that need to be implemented to expand the State's surface storage.
WR R14	Identify Near-term Opportunities for Storage, Use, and Water Transfer Projects	The Department of Water Resources, in coordination with the California Water Commission, Bureau of Reclamation, State Water Resources Control Board, California Department of Public Health, the Delta Stewardship Council, and other agencies and stakeholders, should conduct a survey to identify projects throughout California that could be implemented within the next 5 to 10 years to expand existing surface and groundwater storage facilities, create new storage, improve operation of existing Delta conveyance facilities, and enhance opportunities for conjunctive use programs and water transfers in furtherance of the coequal goals. The California Water Commission should hold hearings and provide recommendations to DWR on priority projects and funding.
WR R15	Improve Water Transfer Procedures	The Department of Water Resources and the State Water Resources Control Board should work with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights

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		and environmental resources by July 1, 2014. 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.
WR P2	Transparency in Water Contracting	<p>The contracting process for water from the State Water Project (SWP) and/or the Central Valley Project (CVP) must be done in a publicly transparent manner consistent with applicable policies of the Department of Water Resources and the Bureau of Reclamation referenced below.</p> <p>For purposes of Water Code section 85057.5(a)(3), this policy “covers” the following:</p> <ol style="list-style-type: none"> a. With regard to water from the SWP, a proposed action to enter into or amend a water supply or water transfer contract subject to DWR Guidelines 03-09 and/or 03-10 (each dated July 3, 2003), which are included in Part 1 of Appendix F. b. With regard to water from the CVP, a proposed action to enter into or amend a water supply or water transfer contract subject to Section 226 of P.L. 97-293 or Section 3405(a)(2)(B) of the Central Valley Project Improvement Act, which are included in Part 2 of Appendix F.
WR R16	Supplemental Water Use Reporting	The State Water Resources Control Board should require water rights holders submitting supplemental statements of water diversion and use or progress reports under their permits or licenses to report on the development and implementation of all water efficiency and water supply projects and on their net (consumptive) use.
WR R17	Integrated Statewide System for Water Use Reporting	The Department of Water Resources, in coordination with the State Water Resources Control Board, the Department of Public Health, Public Utilities Commission, Energy Commission, Bureau of Reclamation, California Urban Water Conservation Council, and other stakeholders, should develop a coordinated statewide system for water use reporting. This system should incorporate recommendations for inclusion of data needed to better manage California’s water resources. The system should be designed to simplify reporting, reduce the number of required reports where possible, be made available to the public online and be integrated with the reporting requirements for the urban water management plans, agricultural water management plans, and integrated regional water management plans. Water suppliers that export water from, transfer water through, or use water in the Delta watershed should be full participants in the data base.
WR R18	California Water Plan	The Department of Water Resources, in consultation with the State Water Resources Control Board, and other agencies and stakeholders, should evaluate and include in the next and all future California Water Plan updates information needed to track water supply reliability performance measures identified in the Delta Plan, including an assessment of water efficiency and new water supply development, regional water balances, improvements in regional self-reliance, reduced regional reliance on the Delta, and reliability of Delta exports, and an overall assessment of progress in achieving the coequal goals.
WR R19	Financial Needs Assessment	As part of the California Water Plan Update, the Department of Water Resources should prepare an assessment of the State’s water infrastructure. This should include the costs of rehabilitating/replacing existing infrastructure, an assessment of the costs of new infrastructure, and an assessment of needed resources for monitoring and adaptive management for these projects. The department should also consider a survey of agencies that may be planning small-scale projects (such as storage or conveyance) that improve water supply reliability.
Chapter 4		
ER P1	Update Delta Flow	Development, implementation, and enforcement of new and updated flow objectives

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	Objectives	<p>for the Delta and high priority tributaries are key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan objectives as follows:</p> <p>a) By June 2, 2014, adopt and implement updated flow objectives for the Delta that are necessary to achieve the coequal goals.</p> <p>b) By June 2, 2018, adopt, and as soon as reasonably possible, implement flow objectives for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.¹</p> <p>Flow objectives could be implemented through several mechanisms including negotiation and settlement, FERC relicensing, or water rights hearing.²</p> <p>Prior to the establishment of revised flow objectives identified above, the existing Bay Delta Water Quality Control Plan objectives shall be used to determine consistency with the Delta Plan. After the flow objectives are revised, the revised objectives shall be used to determine consistency with the Delta Plan.</p> <p>This policy covers a proposed action that could affect flow in the Delta.</p>
ER P2	Restore Habitats at Appropriate Elevations	<p>Habitat restoration must be carried out consistent with the text of Appendix H, which is based on the <i>Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions</i> (DFG 2011), with minor alterations. Figure 4-5 should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.</p> <p>This policy covers a proposed action that includes habitat restoration.</p>
ER P3	Protect Opportunities to Restore Habitat	<p>Significant impacts to the opportunity to restore habitat at the elevations shown in Figure 4-5 must be avoided or mitigated. Mitigation shall be determined, in consultation with the Department of Fish and Game, 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 Figure 4-5, and other relevant information about habitat restoration opportunities of the area. Mitigation may include the restoration and/or permanent protection of other areas to provide habitats that could have been restored at the site.</p> <p>This policy covers proposed actions in the priority habitat restoration areas depicted in Figure 4-6. It does not cover actions outside those areas.</p>
ER P4	Expand Floodplains and Riparian Habitats in Levee Projects	<p>Levee projects must evaluate and where feasible incorporate alternatives, including use of setback levees, to increase floodplains and riparian habitats. When available, the criteria developed under RR R7 must be used to determine appropriate locations for setback levees.</p> <p>This policy covers a proposed action to construct new levees or substantially rehabilitate or reconstruct existing levees.</p>
ER R1	Prioritize and Implement Projects that Restore Delta Habitat	<p>Bay Delta Conservation Plan implementers, Department of Fish and Game, Department of Water Resources, and the Delta Conservancy should prioritize and implement habitat restoration projects in the areas shown in Figure 4-6. Habitat restoration projects should ensure connections between areas being restored and existing habitat areas and other elements of the landscape needed for the full life</p>

¹ SWRCB staff will work with the Council and DFG to determine priority streams. As an illustrative example, priority streams could include the Merced River, Tuolumne River, Stanislaus River, Lower San Joaquin River, Deer Creek (tributary to Sacramento River), Lower Butte Creek, Mill Creek (tributary to Sacramento River), Cosumnes River, and American River (SWRCB 2011a, SWRCB 2011b). Implementation through hearings is expected to take longer than the deadline shown here.

² Implementation through water rights hearings or FERC relicensing is expected to take longer than the deadline shown here.

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		<p>cycle of the species that will benefit from the restoration project. Where possible, restoration projects should also emphasize the potential for improving water quality. Restoration project proponents should coordinate with local mosquito abatement districts.</p> <ul style="list-style-type: none"> ◆ Yolo Bypass. Enhance the ability of the Yolo Bypass to flood more frequently to provide more opportunities for migrating fish, especially Chinook salmon, to use this system as a migration corridor that is rich in cover and food. ◆ Cache Slough Complex. Create broad nontidal, freshwater, emergent plant-dominated wetlands that grade into tidal freshwater wetlands, and shallow subtidal and deep open water habitats. Also, return a significant portion of the region to uplands with vernal pools and grasslands. ◆ Cosumnes River–Mokelumne River confluence. Allow these unregulated and minimally regulated rivers to flood over their banks during winter and spring frequently and regularly to create seasonal floodplains and riparian habitats that grade into tidal marsh and shallow subtidal habitats. ◆ Lower San Joaquin River floodplain. Reconnect the floodplain and restore more natural flows, to stimulate food webs that support native species. Integrate habitat restoration with flood management actions, when feasible. ◆ Suisun Marsh. Restore significant portions of Suisun Marsh to brackish marsh with land-water interactions to support productive, complex food webs to which native species are adapted and to provide space to adapt to rising sea level action. Use information from adaptive management processes during the Suisun Marsh Habitat Management, Preservation, and Restoration Plan's implementation to guide future habitat restoration projects and to inform future tidal marsh management. ◆ Western Delta/Eastern Contra Costa County. Restore tidal marsh and channel margin habitat at Dutch Slough and western islands to support food webs and provide habitat for native species.
ER R2	Complete and Implement Delta Conservancy Strategic Plan	<p>As part of its Strategic Plan and subsequent Implementation Plan or annual work plans, the Delta Conservancy should:</p> <ul style="list-style-type: none"> ◆ Develop and adopt criteria for prioritization and integration of large-scale ecosystem restoration in the Delta and Suisun Marsh, with sustainability and use of best available science as foundational principles. ◆ Develop and adopt processes for ownership and long-term operations and management of land in the Delta and Suisun Marsh acquired for conservation or restoration. ◆ Develop and adopt a formal mutual agreement with the Department of Water Resources, Department of Fish and Game, federal interests, and other State and local agencies on implementation of ecosystem restoration in the Delta and Suisun Marsh. ◆ Develop, in conjunction with the Wildlife Conservation Board, the Department of Water Resources, Department of Fish and Game, Bay Delta Conservation Plan implementers, and other State and

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		<p>local agencies, a plan and protocol for acquiring the land necessary to achieve ecosystem restoration consistent with the coequal goals and the Ecosystem Restoration Program Conservation Strategy.</p> <ul style="list-style-type: none"> ◆ Lead an effort, working with State and federal fish agencies, to investigate how to better use habitat credit agreements to provide credit for each of these steps: (1) acquisition for future restoration; (2) preservation, management, and enhancement of existing habitat; (3) restoration of habitat; and (4) monitoring and evaluation of habitat restoration projects. ◆ Work with the Department of Fish and Game and the U.S. Fish and Wildlife Service to develop rules for voluntary safe harbor agreements with property owners in the Delta whose actions contribute to the recovery of listed threatened or endangered species.
ER R3	Exempt Delta Levees from the U.S. Army Corps of Engineers' Vegetation Policy	Considering the ecosystem value of remaining riparian and shaded riverine aquatic habitat along Delta levees, the U.S. Army Corps of Engineers should agree with the Department of Fish and Game and the Department of Water Resources on a variance that exempts Delta levees from the U.S. Army Corps of Engineers' levee vegetation policy where appropriate.
ER R4	Update the Suisun Marsh Protection Plan	The San Francisco Bay Conservation and Development Commission should update the Suisun Marsh Protection Plan and relevant components of the Suisun Marsh Local Protection Program to adapt to sea level rise and ensure consistency with the Suisun Marsh Preservation Act, the Delta Reform Act, and the Delta Plan.
ER P5	Avoid Introductions and Habitat Improvements that Enhance Survival and Abundance of Nonnative Invasive Species	<p>The potential for new introductions of, or improved habitat conditions for, nonnative invasive species must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.</p> <p>This policy covers a proposed action that has the reasonable probability of introducing, or improving habitat conditions for, nonnative invasive species.</p>
ER R5	Regulate Angling for Nonnative Sport Fish to Protect Native Fish	The Department of Fish and Game should develop, for consideration by the Fish and Game Commission, proposals for new or revised fishing regulations designed to increase populations of listed fish species through reduced predation by introduced sport fish. The proposals should be based on sound science that demonstrates these management actions are likely to achieve their intended outcome and include the development of performance measures and a monitoring plan to support an adaptive management.
ER R6	Prioritize and Implement Actions to Control Nonnative Invasive Species	The Department of Fish and Game and other appropriate agencies should prioritize and fully implement the list of "Stage 2 Actions for Nonnative Invasive Species" and accompanying text shown in Appendix I taken from the <i>Conservation Strategy for Restoration of the Sacramento–San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions</i> (DFG 2011). Implementation of the Stage 2 actions should include the development of performance measures and monitoring plans to support an adaptive management.
ER R7	Manage Hatcheries to Reduce Genetic Risk	As required by the National Marine Fisheries Service, all hatcheries providing listed fish for release into the wild should continue to develop and implement scientifically sound Hatchery and Genetic Management Plans (HGMPs) to reduce risks to those species. The Department of Fish and Game should provide annual updates to the Council on the status of HGMPs within its jurisdiction.

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ER R8	Implement Marking and Tagging Program	By December 2014, the Department of Fish and Game, in cooperation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, should revise and begin implementing its program for marking and tagging hatchery salmon and steelhead to improve management of hatchery and wild stocks based on recommendations of the California Hatchery Scientific Review Group, which considered mass marking, reducing hatchery programs, and mark selective fisheries in developing its recommendations.

Chapter 5

DP R1	Designate the Delta as National Heritage Area	The Delta Protection Commission should complete its application for designation of the Delta and Suisun Marsh as a National Heritage Area and the federal government should complete the process in a timely manner.
DP R2	Designate State Route 160 as a National Scenic Byway	The California Department of Transportation should seek designation of State Route 160 as a National Scenic Byway and prepare and implement a scenic byway plan for it.
DP P1	Locate New Development Wisely	<p>New urban development, including residential, commercial, and industrial uses, must be limited to the following areas (as shown in Figure 5-1 or Appendix K):</p> <ol style="list-style-type: none"> 1. areas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence ; 2. areas within Contra Costa County's 2006 voter-approved urban limit line, except no new urban development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of the date of the Delta Plan's adoption; 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.. <p>For purposes of Water Code section 85057.5(a)(3), this policy covers proposed actions that involve new urban development, including residential, commercial, and industrial uses, that is not located within the areas described in the previous paragraph. In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of the date of the Delta Plan's adoption. 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 and are otherwise consistent with the Delta Plan.</p> <p>This policy is not intended in any way to alter the concurrent authority of the Delta Protection Commission to separately regulate development in the Delta's Primary Zone.</p>
DP P2	Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats	<p>Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing or planned uses when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.</p> <p>This policy covers proposed actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure.</p>
DP R3	Plan for the Vitality and Preservation of Legacy	Local governments, in cooperation with the Delta Protection Commission and Delta Conservancy, should prepare plans for each community that emphasize its distinctive character, encourage historic preservation, identify opportunities to encourage

POLICY OR RECOMMENDATION NUMBER	SHORT TITLE	POLICY/RECOMMENDATION LANGUAGE
	Communities	tourism, serve surrounding lands, or develop other appropriate uses, and reduce flood risks.
DP R4	Buy Rights of Way from Willing Sellers When Feasible	Agencies acquiring land for water management facilities, ecosystem restoration, and flood management infrastructure should purchase from willing sellers, when feasible, including consideration of whether lands suitable for proposed projects are available at fair prices.
DP R5	Provide Adequate Infrastructure	The California Department of Transportation, local agencies, and utilities should plan infrastructure, such as roads and highways, to meet needs of development consistent with sustainable community strategies, local plans, Delta Protection Commission's <i>Land Use and Resource Management Plan for the Primary Zone of the Delta</i> , and the Delta Plan.
DP R6	Plan for State Highways	The Delta Stewardship Council, as part of the prioritization of State levee investments called for in RR P1, should consult with the California Department of Transportation as provided in Water Code section 85307(c) to consider the effects of flood hazards and sea level rise on State highways in the Delta.
DP R7	Subsidence Reduction and Reversal	<p>The following actions should be considered by the appropriate State agencies to address subsidence reversal:</p> <ul style="list-style-type: none"> ◆ State agencies should not renew or enter into agricultural leases on Delta or Suisun Marsh islands if the actions of the lessee promote or contribute to subsidence on the leased land, unless the lessee participates in subsidence-reversal or reduction programs. ◆ State agencies currently conducting subsidence reversal projects in the Delta on State-owned lands should investigate options for scaling up these projects if they have been deemed successful. The Department of Water Resources should develop a plan, including funding needs, for increasing the extent of their subsidence reversal and carbon sequestration projects to 5,000 acres by January 1, 2017. ◆ The Council, in conjunction with the California Air Resources Board (CARB) and the Delta Conservancy, should investigate the opportunity for the development of a carbon market whereby Delta farmers could receive credit for carbon sequestration by reducing subsidence and growing native marsh and wetland plants. This investigation should include the potential for developing offset protocols applicable to these types of plants for subsequent adoption by the CARB.
DP R8	Promote Value-Added Crop Processing	Local governments and economic development organizations, in cooperation with the Delta Protection Commission and the Delta Conservancy, should encourage value-added processing of Delta crops in appropriate locations.
DP R9	Encourage Agritourism	Local governments and economic development organizations, in cooperation with the Delta Protection Commission and the Delta Conservancy, should support growth in agritourism, particularly in and around legacy communities. Local plans should support agritourism where appropriate.
DP R10	Encourage Wildlife-Friendly Farming	The Department of Fish and Game, the Delta Conservancy, and other ecosystem restoration agencies should encourage habitat enhancement and wildlife-friendly farming systems on agricultural lands to benefit both the environment and agriculture.
DP R11	Provide New and Protect Existing Recreation Opportunities	Water management and ecosystem restoration agencies should provide recreation opportunities, including visitor-serving business opportunities, at new facilities and habitat areas whenever feasible, and existing recreation facilities should be protected, using California State Parks' <i>Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh</i> and Delta Protection Commission's <i>Economic Sustainability</i>

POLICY OR RECOMMENDATION NUMBER	SHORT TITLE	POLICY/RECOMMENDATION LANGUAGE
<i>Plan as guides.</i>		
DP R12	Encourage Partnerships to Support Recreation and Tourism	The Delta Protection Commission and Delta Conservancy should encourage partnerships between other State and local agencies, and local landowners and business people to expand recreation, including boating, promote tourism, and minimize adverse impacts to non-recreational landowners.
DP R13	Expand State Recreation Areas	California State Parks should add or improve recreation facilities in the Delta in cooperation with other agencies. As funds become available, it should reopen Brannan Island State Recreation Area, complete the park at Delta Meadows-Locke Boarding House, and consider adding new State parks at Barker Slough, Elkhorn Basin, the Wright-Elmwood Tract, and south Delta.
DP R14	Enhance Nature-Based Recreation	The Department of Fish and Game, in cooperation with other public agencies, should collaborate with nonprofits, private landowners, and business partners to expand wildlife viewing, angling, and hunting opportunities.
DP R15	Promote Boating Safety	The Department of Boating and Waterways should coordinate with the U.S. Coast Guard and State and local agencies on an updated marine patrol strategy for the region.
DP R16	Encourage Recreation on Public Lands	Public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee-top trails, and environmental education.
DP R17	Enhance Opportunities for Visitor-Serving Businesses	Cities, counties, and other local and State agencies should work together to protect and enhance visitor-serving businesses by planning for recreation uses and facilities in the Delta, providing infrastructure to support recreation and tourism, and identifying settings for private visitor-serving development and services.
DP R18	Support the Ports of Stockton and West Sacramento	The ports of Stockton and West Sacramento should encourage maintenance and carefully designed and sited development of port facilities.
DP R19	Plan for Delta Energy Facilities	The Energy Commission and Public Utilities Commission should cooperate with the Delta Stewardship Council as described in Water Code section 85307(d) to identify actions that should be incorporated in the Delta Plan to address the needs of Delta energy development, storage, and distribution by 2017.
Chapter 6		
WQ R1	Protect Beneficial Uses	Water quality in the Delta should be maintained at a level that supports, enhances, and protects beneficial uses identified in the applicable State Water Resources Control Board or regional water quality control board water quality control plans.
WQ R2	Identify Covered Action Impacts	Covered actions should identify any significant impacts to water quality.
WQ R3	Special Water Quality Protections for the Delta	The State Water Resources Control Board or regional water quality control board should evaluate and, if appropriate, propose special water quality protections for priority habitat restoration areas identified in recommendation ER R1 or other areas of the Delta where new or increased discharges of pollutants could adversely impact beneficial uses.
WQ R4	Complete Central Valley Drinking Water Policy	The Central Valley Regional Water Quality Control Board should complete the Central Valley Drinking Water Policy by July 2013.
WQ R5	Complete North Bay Aqueduct Alternative Intake Project	The Department of Water Resources should complete the North Bay Aqueduct Alternate Intake Project EIR by December 31, 2012, and begin construction as soon as possible thereafter.

POLICY OR RECOMMENDATION NUMBER	SHORT TITLE	POLICY/RECOMMENDATION LANGUAGE
WQ R6	Protect Groundwater Beneficial Uses	The State Water Resources Control Board should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012.
WQ R7	Participation in CV-SALTS	The State Water Resources Control Board and Central Valley Regional Water Quality Control Board should consider requiring participation by all relevant water users that are supplied water from the Delta or the Delta Watershed or discharge wastewater to the Delta or the Delta Watershed to participate in the Central Valley Salinity Alternatives for Long-Term Sustainability Program.
WQ R8	Completion of Regulatory Processes, Research, and Monitoring for Water Quality Improvement	<ul style="list-style-type: none"> ◆ The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards are currently engaged in regulatory processes, research, and monitoring essential to improving water quality in the Delta. In order to achieve the coequal goals, it is essential that these ongoing efforts be completed and if possible accelerated, and that the Legislature and Governor devote sufficient funding to make this possible. The Delta Stewardship Council specifically recommends that: ◆ The State Water Resources Control Board should complete development of the proposed Policy for nutrients for Inland Surface Waters of the State of California by January 1, 2014. ◆ The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards should prepare and begin implementation of a study plan for the development of objectives for nutrients in the Delta and Suisun Marsh by January 1, 2014. Studies needed for development of Delta and Suisun Marsh nutrient objectives should be completed by January 1, 2016. The Water Boards should adopt and begin implementation of nutrient objectives, either narrative or numeric, where appropriate, for the Delta and Suisun Marsh by January 1, 2018. ◆ The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board should complete the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for diazinon and chlorpyrifos by January 1, 2013. ◆ The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board prioritize and accelerate the completion of the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for pyrethroids by January 1, 2016. ◆ The State Water Resources Control Board, San Francisco Bay and Central Valley Regional Water Quality Control Boards have completed Total Maximum Daily Load and Basin Plan Amendments for methylmercury and efforts to support their implementation should be coordinated. Parties identified as responsible for current methylmercury loads or proponents of projects that may increase methylmercury loading in the Delta or Suisun Marsh should participate in control studies or implement site-specific study plans that evaluate practices to minimize methylmercury discharges. The Central Valley Regional Water Quality Control Board should review these control studies by December 31, 2018 and determine control measures for implementation starting in 2020. and determine control measures for implementation starting in 2020.
WQ R9	Implement Delta Regional Monitoring	The State Water Resources Control Board and Regional Water Quality Control Boards should work collaboratively with the Department of Water Resources,

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	Program	Department of Fish and Game, and other agencies and entities that monitor water quality in the Delta to develop and implement a Delta Regional Monitoring Program that will be responsible for coordinating monitoring efforts so Delta conditions can be efficiently assessed and reported on a regular basis.
WQ R10	Evaluate Wastewater Recycling, Reuse, or Treatment	The Central Valley Regional Water Quality Control Board, consistent with existing water quality control plan policies and water rights law, should require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate whether all or a portion of the discharge can be recycled, otherwise used, or treated in order to reduce contaminant loads to the Delta by January 1, 2014.
WQ R11	Manage Dissolved Oxygen in Stockton Ship Channel	The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board should complete Phase 2 of the Total Maximum Daily Load and Basin Plan Amendment for dissolved oxygen in the Stockton Ship Channel by January 1, 2015.
WQ R12	Manage Dissolved Oxygen in Suisun Marsh	The State Water Resources Control Board and the San Francisco Bay Regional Water Quality Control Board should complete the Total Maximum Daily Load and Basin Plan Amendment for dissolved oxygen in Suisun Marsh Wetlands by January 1, 2014.

Chapter 7

RR R1	Implement Emergency Preparedness and Response	<p>The following actions should be taken by January 1, 2014, to promote effective emergency preparedness and response in the Delta:</p> <ul style="list-style-type: none"> ◆ Responsible local, State, and federal agencies with emergency response authority should consider and implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5). Such actions should support the development of a regional response system for the Delta. ◆ In consultation with local agencies, the Department of Water Resources should expand its emergency stockpiles to make them regional in nature and usable by a larger number of agencies in accordance with Department of Water Resources' plans and procedures. The Department of Water Resources, as a part of this plan, should evaluate the potential of creating stored material sites by "over-reinforcing" west Delta levees. ◆ Local levee maintaining agencies should consider developing their own emergency action plans, and stockpiling rock and flood fighting materials. ◆ State and local agencies and regulated utilities that own and/or operate infrastructure in the Delta should prepare coordinated emergency response plans to protect the infrastructure from long-term outages resulting from failures of the Delta levees. The emergency procedures should consider methods that also would protect Delta land use and ecosystem.
RR R2	Finance Local Flood Management Activities	The Legislature should create a Delta Flood Risk Management Assessment District with fee assessment authority (including over State infrastructure) to provide adequate flood control protection and emergency response for the regional benefit of all beneficiaries, including landowners, infrastructure owners, and other entities that benefit from the maintenance and improvement of Delta levees, such as water users who rely on the levees to protect water quality.

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		<p>This district should be authorized to:</p> <ul style="list-style-type: none"> ◆ Identify and assess all beneficiaries of Delta flood protection facilities. ◆ Develop, fund, and implement a regional plan of flood management for both project and non project levees of the Delta, including the maintenance and improvement of levees, in cooperation with the existing reclamation districts, cities, counties, and owners of infrastructure and other interests protected by the levees. ◆ Require local levee maintaining agencies to conduct annual levee inspections per the Department of Water Resources subventions program guidelines, and update levee improvement plans every 5 years. ◆ Participate in the collection of data and information necessary for the prioritization of State investments in Delta levees consistent with RR P1. ◆ Notify residents and landowners of flood risk, personal safety information, and available systems for obtaining emergency information before and during a disaster on an annual basis. ◆ Potentially implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5) in conjunction with local, State, and federal agencies and maintain the resulting regional response system and components and procedures on behalf of SEMS jurisdictions (reclamation district, city, county, and State) that would jointly implement the regional system in response to a disaster event. ◆ Identify and assess critical water supply corridor levee operations, maintenance, and improvements.
RR R3	Fund Actions to Protect Infrastructure from Flooding and Other Natural Disasters	<ul style="list-style-type: none"> ◆ The Public Utilities Commission should immediately commence formal hearings to impose a reasonable fee for flood and disaster prevention on regulated privately owned utilities with facilities located in the Delta. Publicly owned utilities should also be encouraged to develop similar fees. The Public Utilities Commission, in consultation with the Delta Stewardship Council, the Department of Water Resources, and the Delta Protection Commission, should allocate these funds between State and local emergency response and flood protection entities in the Delta. If a new regional flood management agency is established by law, a portion of the local share would be allocated to that agency. ◆ The Public Utilities Commission should direct all regulated public utilities in their jurisdiction to immediately take steps to protect their facilities in the Delta from the consequences of a catastrophic failure of levees in the Delta, in order to minimize the impact on the State's economy. ◆ The Governor, by Executive Order, should direct State agencies with projects or infrastructure in the Delta to set aside a reasonable amount of funding to pay for flood protection and disaster prevention. The local share of these funds should be allocated as described above.
RR P1	Prioritization of State Investments in Delta Levees and Risk Reduction	The Delta Stewardship Council, in consultation with the Department of Water Resources, the Central Valley Flood Protection Board, the Delta Protection Commission, local agencies, and the California Water Commission, shall develop funding priorities for State investments in Delta levees by January 1, 2015. These priorities shall be consistent with the provisions of the Delta Reform Act in promoting effective, prioritized strategic State investments in levee operations, maintenance, and

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improvements in the Delta for both levees that are a part of the State Plan of Flood Control and non-project levees. Upon completion, these priorities shall be considered for incorporation into the Delta Plan.

The priorities shall identify guiding principles, constraints, recommended cost share allocations, and strategic considerations to guide Delta flood risk reduction investments, supported by, at a minimum, the following actions to be conducted by the Department of Water Resources, consistent with available funding:

- ◆ An assessment of existing Delta levee conditions. This shall include the development of a Delta levee conditions map based on sound data inputs, including, but not limited to:
 - Geometric levee assessment
 - Flow and updated stage-frequency analysis

- ◆ An island-by-island economics-based risk analysis. This analysis shall consider, but not be limited to, values related to protecting:
 - Island residents/life safety
 - Property
 - Value of Delta islands' economic output, including agriculture.
 - State water supply
 - Critical local, State, federal, and private infrastructure, including aqueducts, state highways, electricity transmission lines, gas/petroleum pipelines, gas fields, railroads, and deepwater shipping channels.
 - Delta water quality
 - Existing ecosystem values and ecosystem restoration opportunities
 - Recreation
 - Systemwide integrity

- ◆ An ongoing assessment of Delta levee conditions. This shall include a process for updating Delta levee assessment information on a routine basis.

This methodology shall provide the basis for the prioritization of State investments in Delta levees. It shall include, but not be limited to, the public reporting of the following items:

- ◆ Tiered ranking of Delta islands, based on economics-based risk analysis values
- ◆ Delta levee conditions status report, including a levee conditions map
- ◆ Inventory of Delta infrastructure assets

Prior to the completion and adoption of these priorities, 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 well as Delta levee funding.

- ◆ Delta Emergency Preparedness, Response, and Recovery: Develop and implement appropriate emergency preparedness, response, and

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recovery strategies, including those developed by the Delta Multi-Hazard Task Force (Water Code Section 12994.5).

- ◆ Delta Levee Funding: The priorities in the following table are meant to guide budget and funding allocation strategies. The Legislature allocates funds for the Delta levee subvention program, which is not a covered action because it funds local agency levee maintenance. The goals for funding levees are all important, and it is expected that over time, the Department of Water Resources must balance these goals. Except on islands planned for ecosystem restoration, improvement of non-project levees to the HMP standard may be funded without justification of the benefits. Improvement to a standard above HMP, such as PL 84-99, may be funded as befits the benefits to be provided, consistent with the Department of Water Resources' current practices and any future adopted investment strategy.

Goals	Localized Flood Protection	Levee Network	Ecosystem Conservation
1	Protect existing urban and adjacent urbanizing areas by providing 200 year flood protection.	Protect water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and the primary channels that carry fresh water through the Delta.	Protect existing and provide for a net increase in channel-margin habitat
2	Protect small communities and critical infrastructure of Statewide importance (located outside of urban areas)	Protect flood water conveyance in and through the Delta to a level consistent with the State Plan of Flood Control for project levees	Protect existing and provide for net enhancement of floodplain habitat
3	Protect agriculture and local working landscapes.	Protect cultural, historic, aesthetic, and recreational resources to a level consistent with HMP (Delta as Place)	Protect existing and provide for net enhancement of wetlands

This policy covers a proposed action that involves discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements.

RR P2

Require Flood Protection for Residential Development in Rural

New residential development of five or more parcels shall provide for a minimum of 200-year flood protection, such as through the use of adequate levees or floodproofing, if it is located outside of:

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	Areas	<ul style="list-style-type: none"> ◆ areas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence; or ◆ areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island; ◆ areas within the Mountain House General Plan Community Boundary in San Joaquin County; or <p>the unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in Appendix K. 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 the previous paragraph.</p>
RR P3	Protect Floodways	<p>No encroachment shall be permitted in a floodway unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.</p> <p>This policy covers a proposed action that would encroach upon a floodway.</p>
RR P4	Protect Floodplains	<p>No encroachment shall be permitted in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant effect on floodplain values and functions, as defined in 33CFR 320.4(l)(1). This does not exempt these potential encroachments from the regulations and requirements of the Central Valley Flood Protection Board.</p> <ul style="list-style-type: none"> ◆ Areas located in the Yolo Bypass from Fremont Weir through Cache Slough to the Sacramento River including the confluence of Putah Creek into the bypass ◆ 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 Department of Water Resources or the U.S. Army Corps of Engineers (DWR 2010a). ◆ 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 Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, RD 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. <p>This policy covers a proposed action that involves projects located in the Yolo Bypass, Cosumnes River-Mokelumne River Confluence, and Lower San Joaquin River Floodplain Bypass areas as described in ER R1.</p>
RR R4	Fund and Implement San Joaquin River Flood Bypass	<p>The Legislature should fund the Department of Water Resources and the Central Valley Flood Protection Board to evaluate and implement a bypass and floodway on the San Joaquin River near Paradise Cut that would reduce flood stage on the mainstem San Joaquin River adjacent to the urban and urbanizing communities of Stockton, Lathrop, and Manteca in accordance with Water Code section 9613(c).</p>
RR R5	Continue Delta Dredging Studies	<p>The current efforts to maintain navigable waters in the Sacramento River Deep Water Ship Channel and Stockton Deep Water Ship Channel, led by the U.S. Army Corps of</p>

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		Engineers and described in the Delta Dredged Sediment Long-Term Management Strategy (USACE 2007, Appendix L), should be continued in a manner that supports the Delta Plan and the coequal goals. Appropriate dredging throughout other areas in the Delta for maintenance purposes, or that would increase flood conveyance and provide potential material for levee maintenance or subsidence reversal should be implemented in a manner that supports the Delta Plan and coequal goals. Coordinated use of dredged material in levee improvement, subsidence reversal, or wetland restoration is encouraged.
RR R6	Designate Additional Floodways	The Central Valley Flood Protection Board should evaluate whether additional areas both within and upstream of the Delta should be designated as floodways. These efforts should consider the anticipated effects of climate change in its evaluation of these areas.
RR R7	Develop Setback Levee Criteria	The Department of Water Resources, in conjunction with the Central Valley Flood Protection Board, the Department of Fish and Game, and the Delta Conservancy, should develop criteria to define locations for future setback levees in the Delta and Delta watershed.
RR R8	Require Flood Insurance	The Legislature should require an adequate level of flood insurance for residences, businesses, and industries in floodprone areas.
RR R9	Limit State Liability	The Legislature should consider statutory and/or constitutional changes that would address the State's potential flood liability, including giving State agencies the same level of immunity with regard to flood liability as federal agencies have under federal law.
Chapter 8		
FP R1	Conduct Current Spending Inventory	An inventory of current State and federal spending on programs and projects that do or may achieve the coequal goals will be conducted. Data sources to be used include the CALFED crosscut budget, State bond balance reports, and the annual State budget, among others. Consideration will be given to selecting an independent agency (which could include a non-governmental organization) to conduct the inventory.
FP R2	Develop Delta Plan Cost Assessment	Costs will be assigned to the projects and programs proposed in the Delta Plan (Chapters 2 through 7) and sources of funding will be identified.
FP R3	Identify Funding Gaps	Current State and federal funding gaps will be identified that are determined to hinder progress towards meeting the coequal goals.

1 Communication and the Delta Plan

2 Keeping the public and decision makers informed as future Delta Plan changes are proposed and
3 considered is a vital step. The Council is committed to open communication of current understanding
4 gained through the evaluation of performance measures, monitoring, science, and adaptive management.
5 This communication will be continuous as the Council receives and produces information that will be
6 used to adapt its strategy toward meeting the coequal goals and updating the Delta Plan. The Council's
7 website and meetings will remain the central hub for communicating information about progress toward
8 meeting the coequal goals and the objectives of the Delta Plan. Information learned from the analysis,
9 synthesis, and evaluation of how well the policies and recommendations in the Delta Plan are meeting
10 their intended goals will be gathered and communicated through a number of media and forums that
11 may include:

- 12 ♦ The Council's meetings and workshops, website, social media, and newsletter
- 13 ♦ Staff reports on the status and trends of the Delta Plan performance measures
- 14 ♦ Reports, presentations, and correspondence presented to the Council
- 15 ♦ Interagency Implementation Committee meetings and products
- 16 ♦ The Delta Science Program website *Science News*, the online journal *San Francisco Estuary &*
17 *Watershed Science*, brown bag seminars, and Biennial Bay-Delta Science Conference
- 18 ♦ Delta ISB meetings and products

19 Covered Actions and Delta Plan Consistency

20 The Delta Reform Act directs the Council to develop a legally enforceable long-term management plan
21 for the Delta (this Delta Plan) and includes a mechanism for enforcement of Delta Plan policies over State
22 and local actions identified as covered actions (Water Code sections 85001(c) and 85022). The Council
23 has taken a hybrid approach to developing the Delta Plan by including both regulatory policies and
24 nonregulatory recommendations. This section presents a discussion of the process and general
25 requirements for certifying consistency with the Delta Plan through compliance with its regulatory
26 policies, and includes examples of covered actions and exemptions.

27 Delta Plan regulatory policies are not intended and shall not be construed as authorizing the Council or
28 any entity acting pursuant to this section, to exercise their power in a manner that will take or damage
29 private property for public use, without the payment of just compensation. These policies are not intended
30 to affect the rights of any owner of property under the Constitution of the State of California or the United
31 States. None of the Delta Plan policies increases the State's flood liability.

32 Covered Actions Must Comply with Delta Plan Policies

33 The Delta Reform Act requires State and local actions that fit the legal definition of a covered action to be
34 consistent with the policies included in the Delta Plan. The mechanism for determining consistency is the
35 filing of a certification of consistency. Not all actions that occur in whole or in part in the Delta are
36 covered actions. Only certain activities qualify as covered actions, and the Delta Reform Act establishes
37 specific criteria and exclusions, discussed in this chapter. Furthermore:

- 38 ♦ The State or local agency that carries out, approves, or funds a proposed action determines
39 whether that proposed plan, program, or project is a covered action (subject to judicial review of
40 whether the determination was reasonable and consistent with the law).

- 1 ♦ The State or local agency that carries out, approves, or funds a covered action (“proponents”)
- 2 needs to certify consistency with the policies included in the Delta Plan.
- 3 ♦ In the case of all other actions (those that do not meet the criteria of being a covered action or are
- 4 otherwise explicitly excluded), the Delta Plan’s policies, where applicable, are recommendations.

5 What Is a Covered Action?

6 For a State or local agency to determine whether its proposed plans, programs, or projects are covered
 7 actions under the Delta Plan and therefore subject to the regulatory provisions in the plan, it must start
 8 with the Delta Reform Act, which defines a covered action as (Water Code section 85057.5(a)):

9 *...a plan, program, or project as defined pursuant to Section 21065 of the Public*
 10 *Resources Code that meets all of the following*
 11 *conditions:*

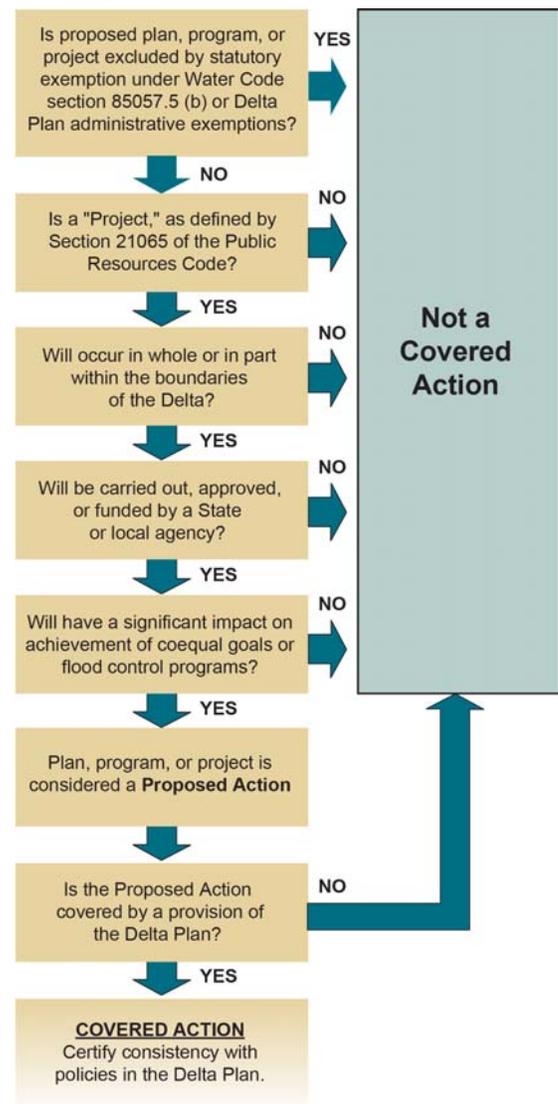
- 12 1. *Will occur, in whole or in part, within the*
 13 *boundaries of the Delta or Suisun Marsh;*
- 14 2. *Will be carried out, approved, or funded by*
 15 *the state or a local public agency;*
- 16 3. *Is covered by one or more provisions of the*
 17 *Delta Plan;*
- 18 4. *Will have a significant impact on the*
 19 *achievement of one or both of the coequal*
 20 *goals or the implementation of government-*
 21 *sponsored flood control programs to reduce*
 22 *risks to people, property, and state interests*
 23 *in the Delta.*

24 Figure 2-3 shows the steps to follow for identifying
 25 whether a proposed plan, project, or program is a
 26 covered action.

27 Screening Criteria for Covered Actions

28 As used in this Delta Plan, the statutory criteria for
 29 covered actions under the Delta Plan are collectively
 30 referred to as “screening criteria.” Before using the
 31 screening criteria, a project proponent should first
 32 determine whether its proposed plan, program, or
 33 project is exempt from covered action status under
 34 either the Council’s administrative exemptions or the
 35 Delta Reform Act’s statutory exemptions, discussed
 36 below. Early consultation with Council staff is
 37 encouraged and can assist in this determination.

- 38 1. **Is a “Project,” as defined by Section 21065 of**
 39 **the Public Resources Code.** A proponent’s
 40 first step in determining whether a plan,
 41 program, or project is a covered action is to
 42 identify whether it meets the definition of a
 43 project as defined in Public Resources Code
 44 section 21065. That particular provision is the



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Figure 2-3
 Decision Tree for State and Local Agencies on Possible Covered Actions

WHAT DOES CEQA CONSIDER A “PROJECT”?

Public Resources Code section 21065 (which is incorporated by reference in the Delta Reform Act) defines the term “project” in the following manner:

21065. “Project” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.*
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.*
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.*

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- 1 section of the California Environmental Quality Act (CEQA) that defines the term “project” for
2 purposes of potential review under CEQA.² If the plan, program, or project does indeed meet the
3 definition of a project under CEQA, the next step in determining a covered action is to review the
4 four additional screening criteria in the definition of covered action, *all* of which must be met by
5 a proposed plan, program, or project for it to qualify as a covered action (see sidebar What Does
6 CEQA Consider a “Project?”).
- 7 **2. Will occur in whole, or in part, within the boundaries of the Delta or Suisun Marsh.** To
8 qualify as a covered action, a project must include one or more activities that take place at least
9 partly within the Delta or Suisun Marsh. This means, for example, that the diversion and use of
10 water in the Delta watershed that is entirely upstream of the statutory Delta or Suisun Marsh
11 would not satisfy this criterion. By contrast, this criteria *would* be met if water intended for use
12 upstream were transferred through the statutory Delta or Suisun Marsh (pursuant, for example, to
13 a water transfer longer than 1 year in duration).
- 14 **3. Will be carried out, approved, or funded by the State or a local public agency.** If these
15 screening criteria are met, it is recommended that the “significant impact” criteria be
16 analyzed next.
- 17 **4. Will have a significant impact on the achievement of one or both of the coequal goals or the**
18 **implementation of a government-sponsored flood control program to reduce risks to people,**
19 **property, and State interests in the Delta.** In addition, a proposed project must have a
20 “significant impact” as defined under Water Code section 85057.5(a)(4) to qualify as a covered
21 action. For this purpose, significant impact means a change in baseline conditions that is directly
22 or indirectly caused by a project and that on its own or when considered “cumulatively” in
23 connection with the effects of past projects, other current projects, and probable future projects,
24 will have a substantial impact on the achievement of one or both of the coequal goals or the
25 implementation of government-sponsored flood control programs to reduce risks to people,
26 property, and State interests in the Delta. The substantial impact can be positive (for example, an
27 ecosystem restoration action that would provide benefits to endangered fish species), negative
28 (for example, a water management action that would result in the pollution of Delta waters or
29 increase the risk of introducing harmful nonnative species), or both positive and negative (for
30 example, a flood protection action that would remove vegetation on levees in an effort to
31 strengthen them, but in so doing, would also reduce riparian habitat critical to recovery of native
32 fish species). The coequal goals and government-sponsored flood control programs are further
33 defined in Chapters 3, 4, and 7.

² It is important to note that CEQA’s various statutory and categorical exemptions—which are considered only after the threshold determination of a CEQA “project” is made—are not similarly incorporated by cross-reference in the definition of covered action. Therefore, the Delta Plan must expressly incorporate a CEQA exemption for it to apply to the Delta Plan.

1 If the above four screening criteria are met, then for purposes of the Delta Plan, the plan, program, or
 2 project is referred to as a “proposed action.” While a proposed action meets the first four screening
 3 criteria, the action has not yet been reviewed by the State or local agency to determine whether it meets
 4 the fifth screening criteria: is the proposed action covered by one or more Delta Plan policies? If the
 5 proposed action is covered by at least one Delta Plan regulatory policy, then the proposed action is a
 6 “covered action.” If the proposed action is not covered by any Delta Plan regulatory policy, it is not a
 7 covered action.

- 8 5. **Is covered by one or more provisions of the Delta Plan.** This means that the proposed action
 9 must be covered by one or more regulatory policies contained in Chapters 3 through 7 of the
 10 Delta Plan. Each of those regulatory policies specifies the types of proposed actions that they
 11 cover. If the proposed action is covered by one or more provisions of the Delta Plan—the final
 12 criteria—the proposed action is therefore a covered action.

13 *Statutory Exemptions*

14 Certain actions are statutorily excluded from the definition of covered action and are exempt from the
 15 Council’s regulatory authority (Water Code section 85057.5(b)). A complete list is included in
 16 Appendix D. These exemptions include:

- 17 ♦ A regulatory action of a State agency (such as the adoption of a water quality control plan by the
 18 SWRCB, or the issuance of a California Endangered Species Act take permit by DFG)
- 19 ♦ Routine maintenance and operation of the State Water Project or the Central Valley Project
- 20 ♦ Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is
 21 owned or operated by a local public agency (such as routine maintenance of levees by a
 22 reclamation district)

23 Although a regulatory action by another State agency is not a covered action, the underlying action
 24 regulated by that agency can be a covered action (provided it otherwise meets the definition). The Council
 25 has concurrent jurisdiction over covered actions when that action is also regulated by another State
 26 agency. For example, the issuance of a California Endangered Species Act take permit by DFG is a
 27 regulatory action of a State agency, and therefore is not a covered action. However, the underlying action
 28 requiring the take permit could be a covered action and, if it is, it must be consistent with the Delta Plan’s
 29 policies. Therefore, even when a covered action is regulated by another agency (or agencies), the covered
 30 action still must be consistent with the Delta Plan. In the situation where a covered action is governed by
 31 multiple agencies and laws, the action must comply with all relevant legal requirements.

32 *Administrative Exemptions*

33 The Council has determined that the following types of projects are not covered actions because they will
 34 not have a significant impact under Water Code section 85057.5(a)(4):

- 35 ♦ “Ministerial” projects exempted from CEQA, pursuant to Public Resources Code section 21080
 36 (b)(1)
- 37 ♦ “Emergency” projects exempted from CEQA, pursuant to Public Resources Code section
 38 21080(b)(2)-(4)
- 39 ♦ Temporary water transfers of up to 1 year in duration. This exemption shall expire on January 1,
 40 2015, unless the Council acts to extend the exemption prior to that date. The Council
 41 contemplates that any extension would be based upon DWR and the SWRCB’s work with
 42 stakeholders to identify and implement transfer measures (see WR R15).

- 1 ♦ Other projects that are exempt under CEQA statutes or guidelines, unless there are unusual
2 circumstances indicating that the project may have a significant impact under Water Code
3 section 85057.5 (a) (4). Examples of unusual circumstances could arise in connection with,
4 among other things:
- 5 • Local government general plan amendments made for consistency with the Delta Protection
6 Commission’s *Land Use and Resource Management Plan*; or
- 7 • Small-scale habitat restoration projects proposed in important restoration areas, but which are
8 inconsistent with the Delta Plan’s policy related to appropriate habitat restoration for a given
9 land elevation.
- 10 ♦ Leases approved by a special district formed under the Harbors and Navigation Code if all of the
11 following apply:
- 12 a. The uses proposed by the lease are authorized by the applicable general plan and zoning
13 ordinances of the city where the special district is located.
- 14 b. The uses proposed by the lease are approved by the city where the special district is located,
15 and the city complies with Water Code section 85225 et seq. (filing of consistency
16 certification for covered actions), if applicable, prior to approval of the lease by the
17 special district.
- 18 c. The special district complies with CEQA prior to approving the lease.
- 19 ♦ Routine dredging activities that are necessary for maintenance of facilities operated by special
20 districts formed under the Harbors and Navigation Code

21 The Council will consider, as part of its ongoing adaptive management of the Delta Plan, whether these
22 exemptions remain appropriate and/or whether the Delta Plan should be amended to include other types
23 of projects.

24 ***Who Determines Whether a Proposed Plan, Program, or Project Is a Covered Action?***

25 A State or local agency that proposes to carry out, approve, or fund a plan, program, or project is the
26 entity that must determine whether that plan, program, or project is a covered action. That determination
27 must be reasonable, made in good faith, and consistent with the Delta Reform Act and relevant provisions
28 of this Plan. If requested, Council staff will meet with an agency’s staff during early consultation to
29 review consistency with the Delta Plan and to offer advice as to whether the proposed plan, program, or
30 project appears to be a covered action, provided that the ultimate determination in this regard must be
31 made by the agency. If an agency determines that a proposed plan, program, or project is not a covered
32 action, that determination is not subject to Council regulatory review, but is subject to judicial review as
33 to whether it was reasonable, made in good faith, and is consistent with the Delta Reform Act and
34 relevant provisions of this Plan.

35 **Certifications of Consistency**

36 Once a State or local agency has determined that their plan, program, or project is a covered action under
37 the Delta Plan, they are required to submit a written certification to the Council, with detailed findings,
38 demonstrating that the covered action is consistent with the Delta Plan (Water Code section 85225
39 et seq.). Furthermore:

- 40 ♦ The first policy in the Delta Plan, G P1, describes requirements to be included in the certification
41 of consistency for all covered actions and is included in this chapter.

- 1 ♦ The certification of consistency must be submitted to the Council prior to initiating
2 implementation of the covered action.
- 3 ♦ The certification of consistency should not be submitted to the Council until the covered action
4 has been fully described and the impacts associated with the covered action have been identified;
5 this coincides with the completion of the CEQA process.
- 6 ♦ Should the covered action project change substantially, the agency will be required to submit a
7 new certification of consistency to the Council.

8 The Council has developed a discretionary checklist that agencies may use to facilitate the process, as
9 well as certification forms and related materials, available on the Council website.

10 *Bay Delta Conservation Plan Covered Activity Consistency Certification*

11 The Delta Reform Act describes a specific process for the potential incorporation of BDCP into the Delta
12 Plan. If BDCP is incorporated, an agency proposing a qualifying “covered activity” under BDCP that also
13 meets the statutory definition of a covered action must file a short form certification of consistency with
14 findings indicating only that the covered action is consistent with the BDCP. Consistency for these
15 purposes shall be presumed if the certification filed by the agency includes a statement to that effect
16 from DFG.

17 Covered Action Consistency Appeals

18 In contrast to how many other governmental plans are implemented, the Council does *not* exercise direct
19 review and approval authority over covered actions to determine their consistency with the regulatory
20 policies in the Delta Plan. Instead, State or local agencies self-certify Delta Plan consistency, and the
21 Council serves as an appellate body for those determinations.

22 Any person, including any member of the Council or its Executive Officer, who claims that a covered
23 action is inconsistent with the Delta Plan and, as a result of that inconsistency, the covered action will
24 have a significant adverse impact on the achievement of one or both of the coequal goals or
25 implementation of government-sponsored flood control program, may file an appeal with regard to a
26 certification of consistency submitted to Council.

27 The Council has appellate authority to determine the consistency of covered actions with the Delta Plan if
28 they are challenged. The Council is required to apply the standard of substantial evidence when reviewing
29 covered action appeals. State or local agencies are required to submit detailed findings upon filing their
30 consistency determination, described previously. These findings and the record will provide the basis for
31 the Council’s decision making.

32 Per statute, an appeal must be filed within 30 days; if a valid appeal is filed, the Council is responsible for
33 subsequent evaluation and determination—as provided in statute and the Council’s Administrative
34 Procedures Governing Appeals—of whether the covered action is consistent with the Delta Plan’s
35 policies. More than one policy in the Delta Plan may apply to a covered action. If no person appeals the
36 certification of consistency, the State or local public agency may proceed to implement the
37 covered action.

38 In the event of an appeal of a covered action, the Council may consult with the DPC consistent with
39 Public Resources Code section 29773.

40 Upon receiving an appeal, the Council has 60 days to hear the appeal and an additional 60 days to make
41 its decision and issue specific written findings. If the covered action is found to be inconsistent, the
42 project may not proceed until it is revised so that it is consistent with the Delta Plan.

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Appendix D

Statutory Exemptions from Covered Actions

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Appendix D

Statutory Exemptions from Covered Actions

- 85057.5. (a) “Covered action” means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:
- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
 - (2) Will be carried out, approved, or funded by the state or a local public agency.
 - (3) Is covered by one or more provisions of the Delta Plan.
 - (4) 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.
- (b) “Covered action” does not include any of the following:
- (1) A regulatory action of a state agency.
 - (2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.
 - (3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.
 - (4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.
 - (5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

- (6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:
 - (A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.
 - (B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.
- (7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.
- (B) Any project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.
- (C) Subparagraphs (A) and (B) do not apply to either of the following:
 - (i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.
 - (ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.
- (c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.