STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

ENDORSED FILED IN THE OFFICE OF 2013 AUG -7 PM 3:30 DEBRA BOWEN SECRETARY OF STATE

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2012-1116-01	2013-0625-03S	

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2013 JUN 25 P 3:43

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: Delta Stewardship Council

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn	2012, 482	11/30/2012

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Regulatory Policies Contained in the Delta Plan

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 5001 5002 5003 5004 5005 5006 5007 5008 5009 5010 5011 5012 5013 5014 5015 5016

AMEND:

REPEAL:

TITLE(S): 23

3. TYPE OF FILING

- ☒ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

~~November 30, 2012 - January 14, 2013~~ April 8, 2013 - April 22, 2013 April 24, 2013 - May 9, 2013

am per agency request 8/5/13

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective 30th day after filing with Secretary of State
- ☐ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☒ Effective other (Specify) September 1, 2013

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☒ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Chris Stevens	(916) 445-0441		

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: [signature] DATE: 6/21/13

TYPED NAME AND TITLE OF SIGNATORY: Christopher M. Knopp, Executive Officer

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 07 2013

Office of Administrative Law

Final Regulation Text

CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS.
DIVISION 6. DELTA STEWARDSHIP COUNCIL.
CHAPTER 2. CONSISTENCY WITH REGULATORY POLICIES CONTAINED IN THE DELTA PLAN.

Note: All text is new.

Article 1. Definitions.

Section 5001. Definitions.

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

(a) "Adaptive management" means a framework and flexible decision-making process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

(b) "Agricultural water management plan" means a plan prepared, adopted, and updated by an agricultural water supplier pursuant to the Agricultural Water Management Planning Act, Water Code section 10800 et seq.

(c) "Agricultural water supplier" under the Water Code refers to both agricultural retail water suppliers and agricultural wholesale water suppliers, but not the California Department of Water Resources or the United States Bureau of Reclamation, and includes both of the following:

(1) A water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water; and

(2) A water supplier or contractor for water, regardless of the basis of the water right, that distributes or sells water for ultimate resale to customers.

(d) "Base Flood" means the flood that has a 1-percent probability of being equaled or exceeded in any given year (also referred to as the 100-year flood).

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

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

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

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

Final Regulation Text

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

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

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

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

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

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

(A) Designate the Delta as a special place worthy of national and state attention;
(B) Plan to protect the Delta's lands and communities;
(C) Maintain Delta agriculture as a primary land use, a food source, a key economic sector, and a way of life;
(D) Encourage recreation and tourism that allow visitors to enjoy and appreciate the Delta and that contribute to its economy;

(E) Sustain a vital Delta economy that includes a mix of agriculture, tourism, recreation, related industries and business, and vital components of state and regional infrastructure; and
(F) Reduce flood and other risks to people, property, and other interests in the Delta.

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

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

(A) Is a "project," as defined pursuant to section 21065 of the Public Resources Code;

(B) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;

(C) Will be carried out, approved, or funded by the State or a local public agency;

(D) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta; and

(E) Is covered by one or more provisions of the Delta Plan, which for these purposes, means one or more of the regulatory policies contained in Article 3.

(2) "Covered action" does not include any plan, program, or project that is exempted pursuant to Water Code section 85057.5(b).

(3) A State or local public agency that proposes to carry out, approve, or fund a plan, program, or project that may be subject to this Chapter must determine whether that proposed plan, program, or project is a covered action. That determination, which is subject to judicial review, must be reasonable, made in good faith, and consistent with the Delta Reform Act and this Chapter.

(4) Nothing in the application of the definition of a "covered action" shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.

(k) "Delta" means the Sacramento-San Joaquin Delta as defined in section 12220 of the Water Code and the Suisun Marsh, as defined in section 29101 of the Public Resources Code.

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

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

(n) "Encroachment" means any obstruction or physical intrusion by construction of works or devices, planting or removal of vegetation, or by any means for any purpose, into or otherwise affecting a floodway or floodplain.

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

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

(q) "Floodplain" means any land area susceptible to being inundated by flood waters from any source.

(r) "Floodplain values and functions" has the same meaning as set forth in 33 Code of Federal Regulations section 320.4(l)(1).

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

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

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

(1) State Water Resources Law of 1945, Water Code section 12570 et seq.;

(2) Sacramento-San Joaquin River Flood Control Projects (Flood Control Act of 1941, P.L. 77-228);

(3) Local Plans of Flood Protection prepared pursuant to the Local Flood Protection Planning Act (Water Code section 8200 et seq.), that are consistent with the Central Valley Flood Protection Plan pursuant to Water Code section 9612;

(4) Central Valley Flood Protection Plan (Water Code section 9600 et seq.);

(5) Subventions Program, Special Projects Program (Water Code section 12300 et seq.);

(6) Way Bill 1973-Subventions Program, Special Projects Program (Water Code section 12980 et seq.);

(7) Central Valley Flood Protection Board Authority (California Code of Regulations, Title 23, Division 1); and

(8) National Flood Insurance Program (National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., P.L. 90-448).

(v) "Nonnative invasive species," for purposes of section 5009, means species that establish and reproduce rapidly outside of their native range and may threaten the diversity or abundance of native

species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.

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

(x) "Project levee" means a federal flood control levee that is a project facility under the State Water Resources Law of 1945, Chapter 1 (commencing with Water Code section 12570) and Chapter 2 (commencing with section 12639 of Part 6 of the Water Code).

(y) "Proposed action" means a plan, program, or project that meets the covered action screening criteria listed in section 5001(j)(1)(A) through (D). Proposed action is also a "covered action," and therefore subject to compliance with the regulatory policies contained in Articles 2 and 3—if the proposed action meets the covered action screening criterion listed in section 5001(j)(1)(E).

(z) "Protection" or "protecting," for purposes of section 5001(h)(2), means preventing harm to the ecosystem, which could include preventing the conversion of existing habitat, the degradation of water quality, irretrievable conversion of lands suitable for restoration, or the spread of invasive nonnative species.

(aa) "Regulated stream" means those streams identified in Table 8.1 of California Code of Regulations, Title 23, section 112, under the jurisdiction of the Board.

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

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

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

(1) "Ministerial" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(1);

(2) "Emergency" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(2) through (4);

(3) Temporary water transfers of up to one year in duration. This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and

administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.;

(4) Other projects exempted from CEQA, unless there are unusual circumstances indicating a reasonable possibility that the project will have a significant impact under Water Code section 85057.5(a)(4), as further defined by this section. Examples of unusual circumstances could arise in connection with, among other things:

(A) Local government general plan amendments for the purpose of achieving consistency with the Delta Protection Commission's Land Use and Resource Management Plan; and

(B) Small-scale habitat restoration projects, as referred to in CEQA Guidelines, section 15333 of Title 14 of the California Code of Regulations, proposed in important restoration areas, but which are inconsistent with the Delta Plan's policy related to appropriate habitat restoration for a given land elevation (section 5006 of this Chapter).

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

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

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

(hh) "Urban water supplier" refers to both "urban retail water suppliers" and "urban wholesale water suppliers":

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

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

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

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85057.5, 85059, 85058, 85066, 85020, 85054, 85052, 85302(g), 85308, 85300, 10608.12, and 10853, Water Code.

Article 2. Certifications of Consistency

Section 5002. Detailed Findings to Establish Consistency with the Delta Plan.

(a) This policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to a covered action. This policy only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies contained in Article 3. Inconsistency with this policy may be the basis for an appeal.

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

(1) Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies contained in Article 3 implicated by the covered action. The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal;

(2) Covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan's Program Environmental Impact Report (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective;

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

(4) Ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through both of the following:

(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

(c) A conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was:

(1) Developed by a local government in the Delta; and

(2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013

is deemed to be consistent with sections 5005 through 5009 of this Chapter if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85225, 85225.10, 85020, 85054, 85302(g), and 85308, Water Code.

Article 3. Consistency with the Regulatory Policies Contained in the Delta Plan.

Section 5003. Reduce Reliance on the Delta through Improved Regional Water Self-Reliance.

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

(1) One or more water suppliers that would receive water as a result of the export, transfer, or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with all of the requirements listed in paragraph (1) of subsection (c);

(2) That failure has significantly caused the need for the export, transfer, or use; and

(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.

(b)For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action to export water from, transfer water through, or use water in the Delta, but does not cover any such action unless one or more water suppliers would receive water as a result of the proposed action.

(c)(1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are therefore consistent with this policy:

(A) Completed a current Urban or Agricultural Water Management Plan (Plan) which has been reviewed by the California Department of Water Resources for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8;

(B) Identified, evaluated, and commenced implementation, consistent with the implementation schedule set forth in the Plan, of all programs and projects included in the Plan that are locally cost effective and technically feasible which reduce reliance on the Delta; and

(C) Included in the Plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. The expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed. For the purposes of reporting, water efficiency is considered a new source of water supply, consistent with Water Code section 1011(a).

(2) Programs and projects that reduce reliance could include, but are not limited to, improvements in water use efficiency, water recycling, stormwater capture and use, advanced water technologies, conjunctive use projects, local and regional water supply and storage projects, and improved regional coordination of local and regional water supply efforts.

NOTE: Authority cited: Section 85210(i), Water Code.

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

Section 5004. Transparency in Water Contracting.

(a) The contracting process for water from the State Water Project and/or the Central Valley Project must be done in a publicly transparent manner consistent with applicable policies of the California Department of Water Resources and the Bureau of Reclamation referenced below.

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

(1) With regard to water from the State Water Project, a proposed action to enter into or amend a water supply or water transfer contract subject to California Department of Water Resources Guidelines 03-09 and/or 03-10 (each dated July 3, 2003), which are attached as Appendix 2A; and

(2) With regard to water from the Central Valley Project, a proposed action to enter into or amend a water supply or water transfer contract subject to section 226 of P.L. 97-293, as amended or section 3405(a)(2)(B) of the Central Valley Project Improvement Act, Title XXXIV of Public Law 102-575, as amended, which are attached as Appendix 2B, and Rules and Regulations promulgated by the Secretary of the Interior to implement these laws.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85021, 85300, and 85302, Water Code.

Section 5005. Delta Flow Objectives.

(a) The State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the State Water Resources Control Board, the revised flow objectives shall be used to determine consistency with the Delta Plan.

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

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85054, 85086, 85087, 85300, and 85302, Water Code.

Section 5006. Restore Habitats at Appropriate Elevations.

(a) Habitat restoration must be carried out consistent with Appendix 3, which is Section II of the Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (California Department of Fish and Wildlife 2011). The elevation map attached as Appendix 4 should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. If a proposed habitat restoration action is not consistent with Appendix 4, the proposal shall provide rationale for the deviation based on best available science.

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

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85022, 85054, 85300, and 85302, Water Code.

Section 5007. Protect Opportunities to Restore Habitat.

(a) Within the priority habitat restoration areas depicted in Appendix 5, significant adverse impacts to the opportunity to restore habitat as described in section 5006, must be avoided or mitigated.

(b) Impacts referenced in subsection (a) will be deemed to be avoided or mitigated if the project is designed and implemented so that it will not preclude or otherwise interfere with the ability to restore habitat as described in section 5006.

(c) Impacts referenced in subsection (a) shall be mitigated to a point where the impacts have no significant effect on the opportunity to restore habitat as described in section 5006. Mitigation shall be determined, in consultation with the California Department of Fish and Wildlife, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area, taking into account existing and proposed restoration plans, landscape attributes, the elevation map shown in Appendix 4, and other relevant information about habitat restoration opportunities of the area.

(d) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions in the priority habitat restoration areas depicted in Appendix 5. It does not cover proposed actions outside those areas.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85022, 85054, 85300, 85302, and 85305, Water Code.

Section 5008. Expand Floodplains and Riparian Habitats in Levee Projects.

(a) Levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. Evaluation of setback levees in the Delta shall be required only in the following areas (shown in Appendix 8): (1) The Sacramento River between Freeport and Walnut Grove, the San Joaquin River from the Delta boundary to Mossdale, Paradise Cut, Steamboat Slough, Sutter Slough; and the North and South Forks of the Mokelumne River, and (2) Urban levee improvement projects in the cities of West Sacramento and Sacramento.

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

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85022, 85054, 85300, 85302, and 85305, Water Code.

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

(a) The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that has the reasonable probability of introducing or improving habitat conditions for nonnative invasive species.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85054, 85300, and 85302, Water Code.

Section 5010. Locate New Urban Development Wisely.

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

(1) Areas that city or county general plans, as of May 16, 2013, designate for residential, commercial, and industrial development in cities or their spheres of influence;

(2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except no new residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of May 16, 2013;

(3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or

(4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove.

(b) Notwithstanding subsection (a), new residential, commercial, and industrial development is permitted outside the areas described in subsection (a) if it is consistent with the land uses designated in county general plans as of May 16, 2013, and is otherwise consistent with this Chapter.

(c) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions that involve new residential, commercial, and industrial development that is not located within the areas described in subsection (a). In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of May 16, 2013. This policy does not cover commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this Chapter.

(d) This policy is not intended in any way to alter the concurrent authority of the Delta Protection Commission to separately regulate development in the Delta's Primary Zone.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85022, 85300, 85302, and 85305, Water Code.

Final Regulation Text

Section 5011. Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats.

(a) Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.

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

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85022, 85054, 85300, and 85305, Water Code.

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

(a) Prior to the completion and adoption of the updated priorities developed pursuant to Water Code section 85306, the interim priorities listed below shall, where applicable and to the extent permitted by law, guide discretionary State investments in Delta flood risk management. Key priorities for interim funding include emergency preparedness, response, and recovery as described in paragraph (1), as well as Delta levees funding as described in paragraph (2).

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

(2) Delta Levees Funding: The priorities shown in the following table are meant to guide budget and funding allocation strategies for levee improvements. The goals for funding priorities are all important, and it is expected that, over time, the California Department of Water Resources must balance achievement of those goals. Except on islands planned for ecosystem restoration, improvement of nonproject Delta levees to the Hazard Mitigation Plan (HMP) standard may be funded without justification of the benefits. Improvements to a standard above HMP, such as that set by the U.S. Army Corps of Engineers under Public Law 84-99, may be funded as befits the benefits to be provided, consistent with the California Department of Water Resources' current practices and any future adopted investment strategy.

Priorities for State Investment in Delta Integrated Flood Management

Categories of Benefit Analysis

Goals	Localized Flood Protection	Levee Network	Ecosystem Conservation
1	Protect existing urban and adjacent urbanizing areas by providing 200-year flood protection.	Protect water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and the primary channels that 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 (Delta as Place).	Protect existing and provide for net enhancement of wetlands.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that involves discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements. Nothing in this policy establishes or otherwise changes existing levee standards.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85300, 85305, and 85306, Water Code.

Section 5013. Require Flood Protection for Residential Development in Rural Areas.

(a) New residential development of five or more parcels shall be protected through floodproofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect against a 55-inch rise in sea level at the Golden Gate, unless the development is located within:

(1) Areas that city or county general plans, as of May 16, 2013, designate for development in cities or their spheres of influence;

(2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island;

(3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or

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

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that involves new residential development of five or more parcels that is not located within the areas described in subsection (a).

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85300, 85305, and 85306, Water Code.

Section 5014. Protect Floodways.

(a) No encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85300, 85302, and 85305, Water Code.

Section 5015. Floodplain Protection.

(a) No encroachment shall be allowed or constructed in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions:

(1) The Yolo Bypass within the Delta;

(2) The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the California Department of Water Resources or the U.S. Army Corps of Engineers (California Department of Water Resources 2010); and

(3) The Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the California Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011. This area may be modified in the future through the completion of this project.

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

(c) This policy is not intended to exempt any activities in any of the areas described in subsection (a) from applicable regulations and requirements of the Central Valley Flood Protection Board.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85300, 85302, and 85305, Water Code.

Article 4. General Provisions.

Section 5016. Miscellaneous Provisions.

(a) The provisions in this Chapter are not intended and shall not be construed as authorizing the Delta Stewardship Council or any entity to exercise its power in a manner that will take or damage private property for public use without the payment of just compensation.

(b) The provisions in this Chapter are not intended to affect the rights of any owner of property under the Constitutions of the State of California or the United States.

(c) The provisions in this Chapter shall not increase the State's flood liability.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85032(j) and 85057.5(d), Water Code.