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Appendix 3J

**Alternative 4A (Proposed Project)**  
**Compliance with the 2009 Delta Reform Act**

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Appendix 3J

## Alternative 4A (Proposed Project) Compliance with the 2009 Delta Reform Act

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4 The purpose of this appendix is to explain the requirements in the 2009 Delta Reform Act that apply  
5 to the proposed project (see Appendix 3I for BDCP’s compliance with the 2009 Delta Reform Act).  
6 This appendix includes a brief overview of the pertinent provisions of the Delta Reform Act and the  
7 certification of consistency process (Water Code section 85057.5 et seq.).

8 The revised proposed project, identified in the Partially Recirculated Draft EIR/Supplemental Draft  
9 EIS (RDEIR/SDEIS), no longer includes an HCP/NCCP (see Chapter 1, *Introduction*, of the EIR/EIS for  
10 more information); therefore the proposed project would not be incorporated into the Delta Plan  
11 pursuant to the HCP/NCCP specific provisions of Water Code section 85320(b). The proposed  
12 project would instead need to comply with other requirements of the Delta Reform Act. The project  
13 proponents will continue to coordinate with the Delta Stewardship Council (Council) and will  
14 consider filing the certification of consistency at the appropriate time. This process is discussed in  
15 greater detail below.<sup>1</sup>

### 3J.1 Delta Reform Act and the Delta Stewardship Council

18 The Delta Reform Act of 2009 (Act) established major new state policy in the Delta in an effort to  
19 advance the state’s coequal goals of providing a more reliable water supply for California and  
20 protecting, restoring, and enhancing the Delta ecosystem (Water Code, Section 85054). This  
21 significant step forward in addressing historic problems in the Delta created a new governance  
22 structure and a system of shared responsibility and authority among state and local agencies. The  
23 Act created the Council as an independent state agency charged with furthering the achievement of  
24 the state’s co-equal goals of providing a more reliable water supply for California and protecting,  
25 restoring, and enhancing the Delta ecosystem; and with developing the Delta Plan (Water Code,  
26 Sections 85200, 85300 et seq.). The Delta Plan is a comprehensive long-term resource management  
27 plan for the Delta, containing both regulatory policies and recommendations, which will further the  
28 coequal goals and promote a healthy Delta ecosystem. The Council adopted the Delta Plan  
29 containing both regulatory policies and recommendations in May 2013.

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<sup>1</sup> On June 24, 2016, Sacramento Superior Court Judge Michael P. Kenny ruled that the Delta Plan is invalid (JCCP 4758), pending the Council’s remedying of certain deficiencies identified by the Court. However, the Delta Stewardship Council has filed notices of appeal in the four coordinated cases where the petitioners prevailed in part, which automatically stays the effect of the trial court’s judgments, writs and orders in those cases. Thus, the status of the Delta Plan and the Council’s consistency certification process remain uncertain during the pendency of the litigation, including the resolution of appeals. DWR will fully comply with the Delta Reform Act, and it will continue to monitor the Delta Plan litigation and future Delta Plan amendments. DWR anticipates that, if California WaterFix, Alternative 4A, is the selected alternative, it will file a certification of consistency at the appropriate time.

1 The Act gave the Council, through its Delta Plan, limited authority over specific Delta related  
2 activities called covered actions. The Act defines a covered action as (Water Code Section  
3 85057.5[a]):

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

- 6 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
- 7 2. Will be carried out, approved, or funded by the state or a local public agency;
- 8 3. Is covered by one or more provisions of the Delta Plan;
- 9 4. Will have a significant impact on the achievement of one or both of the coequal goals or the  
10 implementation of government-sponsored flood control programs to reduce risks to people,  
11 property, and state interests in the Delta.

12 The Act also established a self-certification process for demonstrating consistency with the Delta  
13 Plan. A state or local public agency that proposes to undertake a covered action, prior to initiating  
14 the implementation of that covered action, must prepare a written certification of consistency with  
15 detailed findings as to whether the covered action is consistent with the Delta Plan and must submit  
16 that certification to the Council (Water Code Section 85225). Detailed findings must be included to  
17 demonstrate how the covered action is consistent with all relevant policies of the Delta Plan. The  
18 determination that a proposed activity meets the definition of a covered action is the responsibility  
19 of the state or local agency undertaking the proposed activity. If an agency determines that a  
20 proposed plan, program, or project is not a covered action, that determination is not subject to  
21 Council review. The agency determination is, however, subject to judicial review as to whether it  
22 was reasonable, made in good faith, and is consistent with the Delta Reform Act and relevant  
23 provisions of the Delta Plan.

24 As previously mentioned in this appendix, the proposed project, if approved, would not be  
25 incorporated into the Delta Plan as provided in Water Code 85320(b) and would instead be required  
26 to comply with other provisions of the Delta Reform Act. However, for ease of comparison, Table 3J-  
27 1 inherently considers the specific Water Code 85320(b) elements for Alternative 4A, as was  
28 previously demonstrated for the BDCP. The Table 3J-1 identifies each of the seven requirements and  
29 summarizes how the proposed project meets these requirements. See Appendix 3I for a detailed  
30 discussion of Water Code 85320(b) requirements.

1 **Table 3J-1. Proposed Project (4A) EIR/EIS Consideration of California Water Code § 85320(b)(2)**

California Water Code 85320(b)	4A Consideration
<p>Comprehensive review and analysis of a reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural communities conservation plan, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.</p>	<ul style="list-style-type: none"> <li>• BDCP:                             <ul style="list-style-type: none"> <li>○ Chapter 1, <i>Introduction</i> (1.1, Table 1.2)</li> <li>○ Appendix 3A, <i>Background on the Process of Developing the BDCP Conservation Measures</i> (3A.7.2.3.7)</li> <li>○ Chapter 5, <i>Effects Analysis</i></li> </ul> </li> <li>• Final EIR/EIS:                             <ul style="list-style-type: none"> <li>○ Chapter 2, <i>Project Objectives and Purpose and Need</i></li> <li>○ Chapter 3, <i>Description of Alternatives</i> (3.2, 3.2.1.4, 3.2.1.5, 3.2.2, 3.2.3, 3.2.4 , , 3.5.18, 3.6.4)</li> <li>○ Appendix 3A, <i>Identification of Water Conveyance Alternatives Conservation Measure 1</i> (3A.2.4, 3A.8, 3A.8.1, 3A.9, 3A.9.3, 3A.9.4.2, 3A.9.6, 3A.10, 3A.10.2, 3A.10.3, 3A.10.5, Table 3A-15, Table 3A-21)</li> <li>○ Chapter 5, <i>Water Supply</i> (5.2.2, 5.3.1, Figure 5-47 , Figure 5-48)</li> <li>○ Chapter 6, <i>Surface Water</i> (6.2)</li> <li>○ Chapter 7, <i>Ground Water</i> (7.2)</li> <li>○ Chapter 8, <i>Water Quality</i> (8.2)</li> <li>○ Chapter 11, <i>Fish and Aquatic Resources</i> (11.2)</li> </ul> </li> </ul>
<p>Comprehensive review and analysis of a reasonable Range of Delta Conveyance alternatives including:</p> <ul style="list-style-type: none"> <li>• Through-Delta alternative</li> <li>• Dual Conveyance alternative</li> <li>• Isolated Conveyance alternative</li> <li>• Further Capacity and design options of                             <ul style="list-style-type: none"> <li>○ Lined canal</li> <li>○ Unlined canal</li> <li>○ Pipelines</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Final EIR/EIS:                             <ul style="list-style-type: none"> <li>○ Chapter 3, <i>Description of Alternatives</i> (3.2)</li> <li>○ Appendix 3A, <i>Identification of Water Conveyance Alternatives Conservation Measure 1</i> (3A.1.3, 3A.3.1.1, 3A.3.1.2, 3A.3.1.3, 3A.6, 3A.7, 3A.10.2, 3A.10.3, Table 3A-15)</li> </ul> </li> </ul>
<p>Comprehensive review and analysis of the potential effects of the following ON the conveyance alternatives and habitat restoration activities considered in the EIR:</p> <ul style="list-style-type: none"> <li>• Climate change</li> <li>• Possible sea level rise up to 55 inches</li> <li>• Possible changes in total precipitation and runoff patterns</li> </ul>	<ul style="list-style-type: none"> <li>• Final EIR/EIS:                             <ul style="list-style-type: none"> <li>○ Climate Change (Ch. 29)</li> <li>○ Air Quality and Climate Change Appendices</li> </ul> </li> </ul>
<p>Comprehensive review and analysis of the potential effects on:</p> <ul style="list-style-type: none"> <li>• Migratory fish</li> <li>• Aquatic Resources</li> </ul>	<ul style="list-style-type: none"> <li>• BDCP:                             <ul style="list-style-type: none"> <li>○ Chapter 5, <i>Effects Analysis</i></li> </ul> </li> <li>• Final EIR/EIS:                             <ul style="list-style-type: none"> <li>○ Chapter 11, <i>Fish and Aquatic Resources</i></li> </ul> </li> </ul>

California Water Code 85320(b)	4A Consideration
<p>Comprehensive review and analysis of the potential effects on flood management for:</p> <ul style="list-style-type: none"> <li>• Sacramento River</li> <li>• San Joaquin River</li> </ul>	<ul style="list-style-type: none"> <li>• Final EIR/EIS:               <ul style="list-style-type: none"> <li>○ Chapter 5, <i>Water Supply</i> (5.3.3)</li> <li>○ Chapter 6, <i>Surface Water</i> (6.3.1.2, 6.3.1.3, 6.3.2, 6.3.3, 6.3.4, Table 6-7)</li> <li>○ Appendix 3D, <i>Defining Existing Conditions – No Action Alternative – No Project Alternative – and Cumulative Impact Conditions</i> (Table 3D-A)</li> <li>○ Appendix 5B, <i>Responses to Reduced South of Delta Water Supplies</i> (5B.2.2)</li> <li>○ Appendix 6A, <i>BDCP/California WaterFix Coordination with Flood Management Requirements</i></li> </ul> </li> </ul>
<p>Comprehensive review and analysis of the resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by:</p> <ul style="list-style-type: none"> <li>• Earthquake</li> <li>• Flood</li> <li>• Other natural disaster</li> </ul>	<ul style="list-style-type: none"> <li>• BDCP:               <ul style="list-style-type: none"> <li>○ Chapter 6, <i>Plan Implementation</i> (6.4.2.2, 6.4.2.2.1–6.4.2.2.5, 6.5.2.2.7)</li> </ul> </li> <li>• Final EIR/EIS:               <ul style="list-style-type: none"> <li>○ Appendix 3B, <i>Environmental Commitments</i></li> <li>○ Appendix 3E, <i>Potential Seismic and Climate Change Risks to SWP/CVP Water Supplies</i></li> <li>○ Chapter 5, <i>Water Supply</i></li> <li>○ Appendix 5B, <i>Responses to Reduced South of Delta Water Supplies</i></li> <li>○ Chapter 6, <i>Surface Water</i> (6.3.1–6.3.3)</li> <li>○ Chapter 9, <i>Geology and Seismicity</i> (9.1.1. 4.1–9.1.1.4.6, 9.2, 9.2.2.4, 9.3, 9.3.1.1, 9.3.3, 9.3.3.2)</li> <li>○ Chapter 29, <i>Climate Change</i></li> </ul> </li> </ul>
<p>Comprehensive review and analysis the potential effects of each Delta conveyance alternative on Delta water quality.</p>	<ul style="list-style-type: none"> <li>• Final EIR/EIS:               <ul style="list-style-type: none"> <li>○ Appendix 3B, <i>Environmental Commitments</i> (3B.3.1, 3B.3.1.1, 3B.3.1.2, 3B.3.1.3 )</li> <li>○ Chapter 8, <i>Water Quality</i> (8.3, 8.3.1, 8.3.2.1, 8.3.2.3, 8.3.3, 8.3.4, Table 8-61)</li> <li>○ Appendix 8C, <i>Screening Analysis</i>, Table SA-11</li> <li>○ Chapter 11, <i>Fish and Aquatic Resources</i></li> <li>○ Chapter 14, <i>Agricultural Resources</i></li> <li>○ Chapter 25, <i>Public Health</i></li> </ul> </li> </ul>

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## 2 3J.2 Consistency Requirements

3 As discussed above, the Delta Reform Act of 2009 (Act) established a self-certification process for  
 4 demonstrating consistency with the Delta Plan. This means that state and local agencies proposing  
 5 to undertake a qualifying action, called a “covered action” in the Act, must submit to the Council a  
 6 written certification of consistency with detailed findings as to whether the covered action is  
 7 consistent with the Delta Plan. Covered actions must demonstrate consistency with applicable Delta  
 8 Plan regulatory policies (Title 23, California Code of Regulations, section 5001 *et seq.*, also contained  
 9 in Appendix B of the Delta Plan). The regulatory policies that the state or local agency must  
 10 consider in evaluating consistency are, identified below., Mitigation Measures (G P1[Delta Plan  
 11 Policy or Recommendation Number]/23 California Code of Regulations [CCR] Section 5002)

- 1 • Detailed Findings to Establish Consistency With Potentially Applicable Delta Plan Policies (GP
- 2 1/23 CCR Section 5002)
- 3 ○ Delta Plan Mitigation Measures
- 4 ○ Best Available Science
- 5 ○ Adaptive Management
- 6 • Reduce Reliance on the Delta through Improved Regional Water Self-Reliance (WR P1/23 CCR
- 7 Section 5003)
- 8 • Transparency in Water Contracting (WR P2/23 CCR Section 5004)
- 9 • Conservation Measure (G P1/23 CCR Section 5002)
- 10 • Delta Flow Objectives (ER P1/23 CCR Section 5005)
- 11 • Restore Habitats at Appropriate Elevations (ER P2/23 CCR Section 5006)
- 12 • Protect Opportunities to Restore Habitat (ER P3/23 CCR Section 5007)
- 13 • Expand Floodplains and Riparian Habitats in Levee Projects (ER P4/23 CCR Section 5008)
- 14 • Avoid Introductions of and Habitat for Invasive Nonnative Species (ER P5/23 CCR Section 5009)
- 15 • Locate New Urban Development Wisely (DP P1/23 CCR Section 5010)
- 16 • Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats (DP P2/23
- 17 CCR Section 5011)
- 18 • Prioritization of State Investments in Delta Levees and Risk Reduction (RR P1/23 CCR Section
- 19 5012)
- 20 • Require Flood Protection for Residential Development in Rural Areas (RR P2/23 CCR Section
- 21 5013)
- 22 • Protect Floodways (RR P3/23 CCR Section 5014)
- 23 • Floodplain Protection (RR P4/23 CCR Section 5015)