



Governor Newsom unveiled a broad set of policy proposals on May 19, 2023, to streamline clean energy, water, and transportation infrastructure projects. This “infrastructure package” includes the following 10 policy proposals:

- [Administrative Records Review \(Language\) \(updated: 05/19/2023\)](#)
- [CEQA Judicial Streamlining \(Language\) \(updated: 05/19/2023\)](#)
- [Green Financing Programs for Federal IRA Funding \(Language\) \(updated: 05/19/2023\)](#)
- [Accelerating Environmental Mitigation \(Language\) \(updated: 05/19/2023\)](#)
- [National Environmental Policy Act \(NEPA\) Delegation Authority \(Language\) \(updated: 05/19/2023\)](#)
- [Direct Contracting \(Public-Private Partnership Authority 1-15 Wildlife Crossings\) \(Language\) \(updated: 05/19/2023\)](#)
- [Job Order Contracting \(Language\) \(updated: 05/19/2023\)](#)
- [Progressive Design Build Authority for Caltrans and DWR \(Language\) \(updated: 05/19/2023\)](#)
- [Fully Protected Species Reclassification \(Language\) \(updated: 05/19/2023\)](#)
- [Delta Reform Act Streamlining \(Language\) \(updated: 05/19/2023\)](#)

This package was made public along with the issuance of Executive Order N-8-23, which calls for the convening of an Infrastructure Strike Team to identify streamlining opportunities. Governor Newsom intends to “facilitate and streamline project approval and completion to maximize California’s share of federal infrastructure dollars and expedite the implementation of projects that meet the state’s ambitious economic, climate, and social goals.”

Appropriate process for significant policy changes? The Governor has expressed a desire that the Legislature include these streamlining proposals – released after the May Revision – as “trailer bills” in the 2023-24 State Budget. As a whole, this package of bills represents significant policy changes in various areas, including transportation, wildlife, water, and natural resource laws. Considering these proposals late in the Budget process, especially after subcommittees have concluded their work, significantly limits transparency and public input. Hastily considering these proposals increases the potential for creating unintended consequences while limiting the Legislature’s ability to evaluate whether the proposals will actually lead to the positive impacts envisioned by this administration.

The Transportation Committee, Water, Parks, and Wildlife Committee, Natural Resources Committee, and Judiciary Committee will be holding informational hearings to gather

information and hear initial stakeholder input on these infrastructure proposals on June 5th, 6th and 7th. While these informational hearings are important first conversations, a more thorough policy process is likely needed, especially for the more expansive proposals.

Urgency? While accelerating the development and construction of critical infrastructure is a laudable and shared goal, each of these proposals should be evaluated for whether it is necessary to take legislative action in June as part of the Budget or if it is even necessary to undertake a truncated legislative process to consider these proposals through the remainder of this legislative year. These proposals relate to streamlining environmental review for certain projects, expediting public contracting processes, and changing quorum rules for one state agency. Should aspects of these proposals be found to have merit and be passed by the Legislature, there will likely be minimal impact on project implementation timelines, whether these measures are passed in June or August, or even January of next year.

The Legislature may wish to evaluate each of these proposals to understand whether there are sufficient benefits for evaluating these policies during a very truncated timeline, given the potential for unintended consequences.

“Water-related project.” While not within this Committee’s jurisdiction, the Administration’s proposal for judicial streamlining under the California Environmental Quality Act (CEQA) applies to “water-related projects.” These projects are defined as the Sacramento-San Joaquin Delta Conveyance Project (Delta Conveyance Project), water storage projects funded by the Water Storage Investment Program under Proposition 1, recycled water projects, water desalination projects, and water canal or conveyance projects (e.g., California Aqueduct that is part of State Water Project). The Natural Resources and Judiciary Committees will be reviewing the CEQA streamlining proposal on Wednesday, June 7, 2023; however, it is important context for the purposes of today’s hearing to consider how the entirety of the Administration’s infrastructure policy package will impact the state’s water system (see next comment).

Delta water conveyance. The Administration has identified the design and implementation of this project in both its [Water Resilience Portfolio](#) (2021) and [Water Supply Strategy](#) (August 2022). Several proposals in the infrastructure policy package will result in streamlined processes for this project, including those relating to CEQA, consistency determinations with the Delta Plan, use of “progressive design-build” procurement authority, fully protected species reclassification, and administrative records review. The Committee may wish to consider how the infrastructure policy package impacts this specific project and may limit public input on this controversial project when reviewing this infrastructure policy package.

Administration infrastructure policy proposal: Delta Reform Act streamlining

Summary: Streamlines review and appeal procedures for actions taken by the Delta Stewardship Council (Council) and sets a 60-day statute of limitations on challenges to Council actions.

Specifically, this proposal:

- 1) Establishes a 60-day statute of limitations on challenges to adoption of, or amendments to, the Delta Plan and to adoption of the Council’s appeal procedures.
- 2) Establishes a 60-day statute of limitations on challenges to the Council’s determination on an appeal.
- 3) Clarifies that the Council may authorize one of its members or another designee to hear an appeal and that a final action on an appeal may be taken by a majority of those councilmembers present at a meeting (rather than a majority of the Council).
- 4) Provides that once a quorum is established at a Council meeting, a majority of the councilmembers present may take action.
- 5) Extends time for the Council to consider an appeal on one of its determinations from 60 days to 90 days.
- 6) Provides that the provisions of the Delta Plan are severable and that if one provision is invalidated, the other provisions stand.

Purpose: According to the Administration’s fact sheet regarding this proposal, it will “streamline certain review processes so Delta Plan projects can be planned, permitted, and built faster while protecting the environment.” The Administration asserts these changes are necessary to advance the goals of the [Water Resilience Portfolio](#) and the Governor’s August 2022 [Water Supply Strategy](#). Both of these strategies include implementation of the Delta Conveyance Project.

Background: In 2009, the Legislature enacted the Sacramento-San Joaquin Delta Reform Act (Delta Reform Act of 2009) to improve conditions in, and achieve the state’s co-equal goals for, the Delta: (1) to provide a reliable water supply and (2) to protect, restore, and enhance the Delta ecosystem. Among other provisions, the Delta Reform Act of 2009 established the Council and charged it with developing, adopting, and beginning implementation of a “[Delta Plan](#)” by January 1, 2012 that will lead to the achievement of the co-equal goals.

The Council consists of seven voting members, four appointed by the Governor, one appointed by the Senate Rules Committee, one appointed by the Speaker of the Assembly, and the final member being the Chair of the Delta Protection Commission. A quorum of the Council is four (i.e., a majority of the voting members of the Council).

Certain actions by state and local agencies (“covered actions”) must be consistent with the Delta Plan. To determine consistency, a state or local agency must submit a written certification to the Council. “Covered action” refers broadly to programs or projects implemented by a state or local agency within the Delta that has an impact on achieving the co-equal goals. Various actions by state and local agencies are excluded from the definition of “covered action,” including: regulatory actions, routine maintenance of water and transportation infrastructure, and most actions in the Delta secondary zone (see Figure 1). Delta conveyance is a “covered

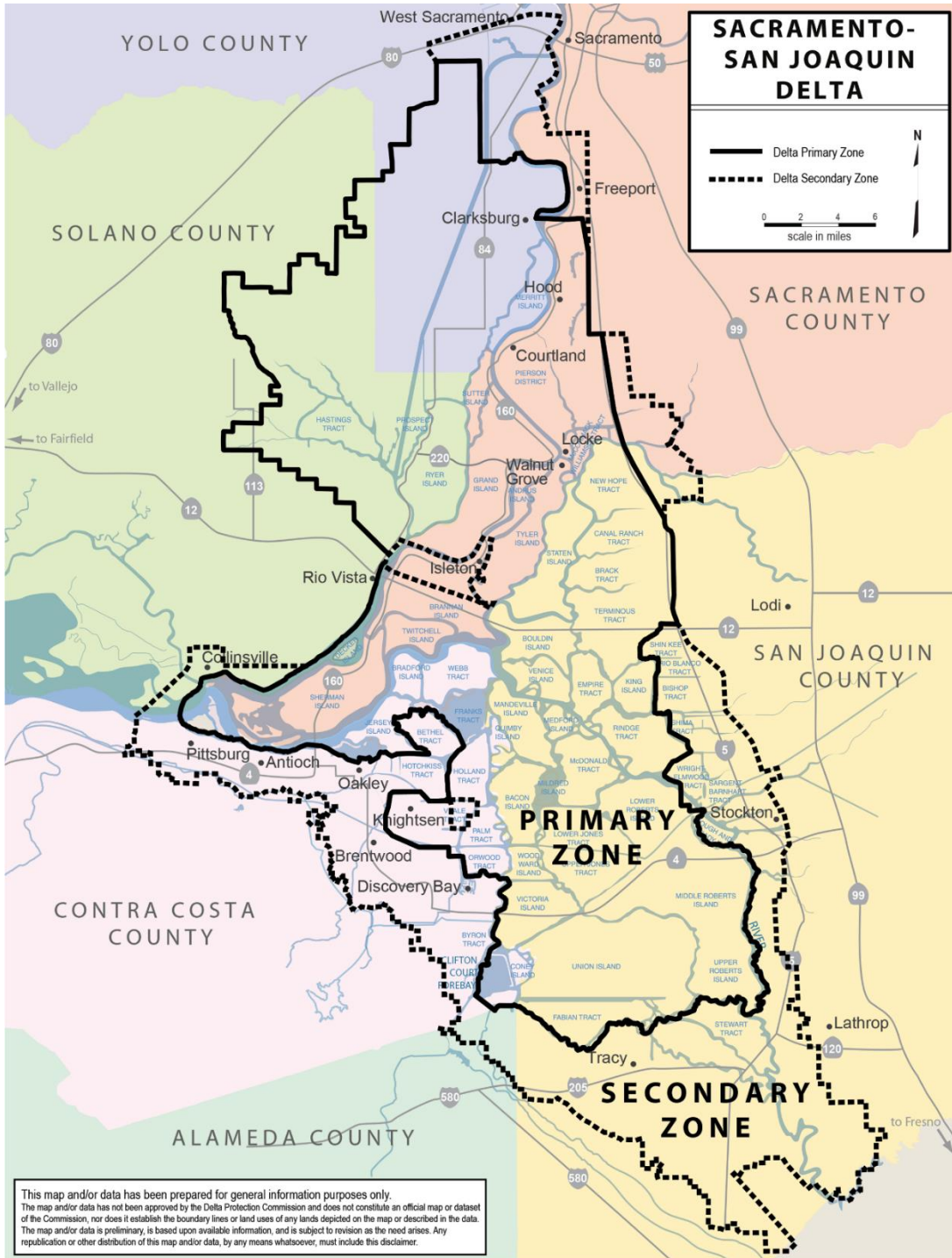
action” and DWR and the Delta Conveyance Design and Construction Authority will need to submit a consistency determination to the Council before implementing that project.

A consistency certification submitted to the Council by a state or local agency is deemed valid unless it is appealed. Under the Delta Reform Act of 2009, any person that believes a “covered action” is inconsistent with the Delta Plan may file an appeal with the Council. The appeal must contain detailed information as to why the action is inconsistent and must be filed within 30 days of the submittal of a consistency certification. The Council must hold a hearing on the appeal within 60 days of receiving a lawful appeal and make a decision on the merits of the appeal within 60 days of the hearing. This proposal would give the Council an additional 30 days (90 days instead of current 60 days) to reach a decision on the merits of an appeal.

Policy considerations:

- *Implications of these changes for consideration of Delta Conveyance Project?* Given the controversy surrounding the Delta Conveyance Project, it is certain that stakeholders will appeal any consistency determination submitted by the Delta Conveyance Design and Construction Authority or DWR. The Committee may wish to consider whether 60 days is sufficient time to challenge a determination on an appeal by the Council and whether a majority of the voting members of the Council should be present for a determination on an appeal relating to Delta Conveyance.
- *Should a quorum of the entire Council be necessary to make a final determination on an appeal?* Building on the previous question, this proposal’s changes regarding quorum requirements may have some merit for routine administrative decisions made by the Council, but it is concerning that this proposal also changes the quorum requirement for appeals. Under this proposal, a majority of those councilmembers *present* at a hearing may issue a final decision on an appeal rather than a quorum of the full Council regardless of how many are present.
- *Urgency and process?* Regardless of the merit of the provisions of this proposal, it is not clear why this must be done as part of the budget process. It appears that submission of a consistency determination on the Delta Conveyance project is not imminent as a final Environmental Impact Report for the project is anticipated in late 2023 and these changes are unrelated to budget appropriations.

Figure 1. Map of Sacramento-San Joaquin Delta.



Proposal Language: [Delta Reform Act Streamlining \(Language\)](#)

Administration factsheet: [Delta Reform Act Streamlining \(Fact Sheet\)](#)

Administration infrastructure policy proposal: Accelerating environmental mitigation

Summary: This policy proposal provides the California Department of Transportation (Caltrans) with the authority to acquire, maintain, and transfer environmental mitigation properties and to provide for the long-term maintenance of such properties. Specifically, this proposal:

- 1) Provides Caltrans with clear authority to acquire and transfer environmental mitigation properties necessary to mitigate impacts from the construction or operation of the state highway system.
- 2) Establishes a presumption that funding identified in the State Highway System Management Plan is adequate for the long-term maintenance of wildlife corridors established by Caltrans to mitigate impacts to species protected under the California Endangered Species Act (CESA).
- 3) Permits Caltrans to establish an endowment, or provide funding to another entity to establish an endowment, for the long-term maintenance of environmental mitigation properties Caltrans must acquire to meet its environmental mitigation requirements.
- 4) Permits Caltrans to acquire, or use an alternative method (e.g., sole-source contracting) to acquire mitigation credits from a mitigation bank or similar entity to meet its environmental mitigation requirements.
- 5) Permits Caltrans to enter into an agreement with other public agencies, nonprofit organizations, or foundations to hold and manage an endowment to ensure funding for the long-term maintenance of environmental mitigation properties

Purpose: According to the Administration’s fact sheet regarding this proposal, it will “streamline the implementation of environmental mitigation measures for the efficient delivery of (Caltrans’) projects.” The Administration asserts this proposal is necessary to overcome delays associated with meeting environmental mitigation requirements for transportation projects that, in turn, can increase costs and delay construction of these projects.

Background: To address environmental impacts, transportation projects must comply with applicable environmental laws and regulations; examples include CESA, the federal Clean Water Act, and the California Coastal Act, among others. Compliance with these laws and regulations often results in the need for environmental mitigation properties which is an additional cost.

The Legislature passed AB 1282 (Mullin), Chapter 643, Statutes of 2017, to establish the Transportation Permitting Task Force (Task Force) to address statewide transportation permitting challenges. The Task Force issued a final report (AB 1282 Report) with a range of recommendations in June 2020. The Administration claims that this proposal “would implement several recommendations of the [AB 1282 Report].” None of the specific provisions in this proposal are found in the AB 1282 Report but some of its broader recommendations do overlap with this policy proposal, including:

- Recommendation 4.7 – Clarify financial assurance agreements.
- Recommendation 6.2 – Establish crediting framework for projects that result in fish passage and wildlife connectivity and other environmental improvements.

- Recommendation 6.3 – Update mitigation bank policies and practices to accommodate advance mitigation purchases.

Policy considerations:

- *Sufficient funding for long-term stewardship of environmental mitigation properties?* A major challenge with environmental mitigation properties is providing sufficient funding for their long-term maintenance so that such properties continue to provide habitat for impacted species and/or offset other environmental impacts associated with a project over time. Mitigation is theoretically supposed to ensure ongoing environmental performance “in perpetuity.” In some cases, regulatory agencies require that an endowment be established to provide funding for this long-term maintenance. This proposal establishes a presumption that funding in the State Highway System Management Plan is adequate to maintain certain mitigation features but the Administration has provided no information to demonstrate that this is, indeed, the case. This could be problematic if funding available does not match the need.
- *Backlog at DFW Conservation and Mitigation Banking program?* Some organizations have expressed frustration at the length of time to receive DFW reviews of conservation banks. In turn, this can hold up the permits for projects as there are no conservation bank credits available. This proposal could place additional strain on the Conservation and Mitigation Banking program and it is unclear if additional staff at DFW will be requested.
- *Urgency and process?* While there may be some merit to some of the provisions of this proposal, it is not clear why this must be done as part of the budget process. The AB 1282 Report was finalized three years ago and if there were such urgency to implementing its recommendations, why did the Administration wait until now to unveil this proposal? Likewise, the nexus of this policy proposal with the budget is negligible.

Proposal Language: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/959>

Administration factsheet: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/960>

Administration infrastructure policy proposal: Progressive design build authority for the Department of Water Resources (DWR)

Summary: This policy proposal authorizes DWR to use “progressive design-build” to procure up to eight public works projects that have an estimated cost of \$25 million or more through January 1, 2031. Specifically, this proposal:

- 1) Authorizes DWR to use “progressive design-build” to procure up to eight public works projects that have an estimated cost of \$25 million or more.
- 2) Requires DWR to follow a prescribed process in using the “progressive design-build” procurement method for public works projects including: the issuance of a request for qualifications (RFQ), a process to review submitted RFQs, and a public announcement of the awarding of a “progressive design-build” contract.
- 3) Requires DWR to evaluate statements of qualifications submitted in response to an RFQ and negotiate contract terms with the entity that provides the best value to the public.
- 4) Requires an entity receiving a “progressive design-build” contract to provide payment and performance bonds as specified by the director of DWR.
- 5) Requires DWR to follow a process for entering into a design-build contract and negotiating a guaranteed maximum price for the project.
- 6) Authorizes DWR to terminate a contract with an entity to complete a design-build project and, instead, solicit proposals from other firms to complete the project.
- 7) Requires DWR to submit a report to the Legislature on its use of the “progressive design-build” procurement method by January 1, 2030.
- 8) Sunsets DWR’s authority to use “progressive design-build” on January 1, 2031.

Purpose: According to the Administration’s fact sheet regarding this proposal, the authority to use “progressive design-build” will avoid the traditional, more cumbersome “design-bid-build” process and lead to potential cost savings and shorter delivery schedules.

Background: State agencies are generally required to use the “design-bid-build” process when constructing public works projects. Under the “design-bid-build” process, a state agency fully completes the design of a project prior to awarding a construction contract and must award that contract to the “lowest responsible bidder.” This process is intended to ensure that the project is built for the lowest possible cost. There are exceptions to this requirement and the California Department of Transportation, the Department of General Services, the Military Department, the California Department of Corrections and Rehabilitation, and DWR may use “design-build” or Construction Manager/General Contractor (CM/GC) to construct specified public works projects. These procurement methods are intended to be quicker and more cost-effective methods.

Progressive design-build is a variant of traditional design-build contracting. While there is some variation, the progressive design-build model generally includes two phases. In the first phase, the awarding authority uses a best-value process to select a contractor that completes preliminary plans and preconstruction services necessary to provide a cost estimate and final design proposal. The project then “progresses” to the second phase, where the awarding authority and the

contractor to a final design, project cost (“guaranteed max price”), and schedule. If they cannot agree, there is an “off-ramp” between the two phases where the awarding authority can pursue other options, but still benefit from having the first phase work complete. This is different from traditional design-build, where the public agency contracts with a single entity to design and construct a project at a set price before design work begins, and without a similar off-ramp.

SB 626 (Dodd), Chapter 247, Statutes of 2021, granted DWR authority to use “design-build” and CM/GC procurement methods for up to seven public works projects per method through January 1, 2033. SB 626 required DWR to require contractors to use a skilled and trained workforce and enter into a project labor agreement with a contractor when using “design-build.” SB 626 also explicitly excluded the use of these procurement methods for through Sacramento-San Joaquin Delta water conveyance facilities.

Policy considerations:

- *Should “progressive design-build” be used for through-Delta water conveyance?* Unlike SB 626, this proposal does not prohibit DWR from using the “progressive design-build” procurement method for Delta conveyance. Given that the Delta Conveyance Design and Construction Authority (a Joint Powers Authority between public water agencies that receive water through the State Water Project) entered into a Joint Exercise of Powers Agreement with DWR in 2018, this proposal would enable “progressive design-build” procurement authority to be used for Delta conveyance.
- *Should labor provisions be included?* The proposal lacks language seen in SB 626 (Dodd) and other previously enacted legislation related to design-build and progressive design-build, specifically language pertaining to requirements for project labor agreements and a skilled and trained workforce.
- *Urgency and process?* Regardless of the merit of the provisions of this proposal, it is not clear why this must be done as part of the budget process. DWR already has expedited procurement authority (per SB 626) and the Delta conveyance project is still undergoing environmental review.

Proposal Language: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/967>

Administration factsheet: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/969>

Administration infrastructure policy proposal: Fully Protected Species Reclassification

Summary: Eliminates “fully protected” species protections under California law and requires seven currently fully protected species that are not also listed under the California Endangered Species Act (CESA) to be deemed “threatened” under CESA. Specifically, this proposal:

- 1) Repeals the four existing statutes designating species as “fully protected” under California law.
- 2) Requires the following currently “fully protected” species to be listed as “threatened” under CESA:
 - a) Golden eagle (*Aquila chrysaetos*);
 - b) Trumpeter swan (*Cygnus buccinator*);
 - c) White-tailed kite (*Elanus leucurus*);
 - d) Northern elephant seal (*Mirounga angustirostris*);
 - e) Ring-tailed cat (genus *Bassariscus*);
 - f) Pacific right whale (*Eubalaena sieboldi*), and
 - g) Southern sea otter (*Enhydra lutris nereis*).
- 3) Makes no changes to the existing CESA status of 27 other “fully protected” species.
- 4) Specifies that three “fully protected” species that were previously delisted under CESA will have no listing status but retain the protections afforded to species generally under the Fish and Game Code (FGC).
- 5) Makes conforming changes throughout the FGC.

Purpose: According to the Administration’s fact sheet regarding this proposal, changing the status of all existing fully protected species to an appropriate CESA listing status will facilitate responsible development by allowing DFW to authorize incidental take and benefit these species by ensuring that all such authorized take is subject to the requirement to minimize and fully mitigate all impacts of the taking.

Background: In the 1960s, California began its efforts to identify and protect animals that were rare or at risk of extinction within the state. These efforts resulted in lists of 37 fully protected species that may not be taken or possessed, with limited exceptions – for example, for scientific research or, in the case of fully protected birds, for the relocation of birds to protect livestock.

Since the creation of the fully protected species lists, Congress and the Legislature enacted the federal Endangered Species Act (ESA) and CESA, respectively. Of the 37 species currently designated as fully protected, eight are also listed as threatened and 19 are also listed as endangered under CESA. Three species were delisted from CESA by the Fish and Game Commission based on scientific findings that the protections afforded by listing were no longer necessary due to species recovery or extinction. Those three species are currently still fully protected species.

Table 1. Fully protected birds (FGC § 3511)

	Species	CESA Status	ESA Status	Notes
1	American peregrine falcon (<i>Falco peregrinus anatum</i>)	Delisted - recovered (2009)	Delisted - recovered (1999)	
2	Brown pelican (<i>Pelecanus occidentalis californicus</i>)	Delisted – recovered (2009)	Delisted – recovered (2009)	
3	California black rail (<i>Laterallus jamaicensis coturniculus</i>)	Threatened (1971)	none	
4	California clapper rail (<i>Rallus longirostris obsoletus</i>)	Endangered (1971)	Endangered (1970)	Now known as California Ridgeway’s rail (<i>Rallus obsoletus obsoletus</i>)
5	California condor (<i>Gymnogyps californianus</i>)	Endangered (1971)	Endangered (1967)	
6	California least tern (<i>Sterna albifrons browni</i>)	Endangered (1971)	Endangered (1970)	
7	Golden eagle (<i>Aquila chrysaetos</i>)	none	none	
8	Greater sandhill crane (<i>Grus canadensis tabida</i>)	Threatened	none	
9	Light-footed clapper rail (<i>Rallus longirostris levipes</i>)	Endangered (1971)	Endangered (1970)	Now known as light-footed Ridgway's rail (<i>Rallus obsoletus levipes</i>)
10	Southern bald eagle (<i>Haliaeetus leucocephalus leucocephalus</i>)	Endangered (1980)	Delisted – recovered (2007)	

11	Trumpeter swan (<i>Cygnus buccinator</i>)	none	none	
12	White-tailed kite (<i>Elanus leucurus</i>)	none	none	
13	Yuma clapper rail (<i>Rallus longirostris yumanensis</i>)	Threatened (1978)	Endangered (1967)	Now known as Yuma Ridgway's rail (<i>Rallus obsoletus yumanensis</i>)

Table 2. Fully protected mammals (FGC § 4700)

	Species	CESA Status	ESA Status	Notes
1	Morro Bay kangaroo rat (<i>Dipodomys heermanni morroensis</i>)	Endangered (1971)	Endangered (1970)	
2a/ 2b	Bighorn sheep (<i>Ovis canadensis</i>): <i>Ovis canadensis nelsoni</i> (Peninsular DPS) <i>Ovis canadensis sierrae/californiana</i>	Threatened (1971) Endangered (1999)	Endangered (1998) Endangered (2000)	Allows for sport hunting of Nelson bighorn sheep (subspecies <i>Ovis canadensis nelsoni</i>) under FGC § 4902 (b)
3	Northern elephant seal (<i>Mirounga angustirostris</i>)	none	none	
4	Guadalupe fur seal (<i>Arctocephalus townsendi</i>)	Threatened (1971)	Threatened (1986)	
5	Ring-tailed cat (genus <i>Bassariscus</i>)	none	none	

6	Pacific right whale <i>(Eubalaena sieboldi)</i>	none	none	North Pacific right whale <i>(Eubalaena japonica)</i> listed as Federally endangered
7	Salt-marsh harvest mouse <i>(Reithrodontomys raviventris)</i>	Endangered (1971)	Endangered (1970)	
8	Southern sea otter <i>(Enhydra lutris nereis)</i>	none	Threatened (1977)	
9	Wolverine <i>(Gulo luscus)</i>	Threatened (1971)	none	

Table 3. Fully protected reptiles and amphibians (FGC § 5050)

	Species	CESA Status	ESA Status	Notes
1	Blunt-nosed leopard lizard (<i>Gambelia sila</i>)	Endangered (1971)	Endangered (1967)	
2	San Francisco garter snake (<i>Thamnophis sirtalis tetrataenia</i>)	Endangered (1971)	Endangered (1967)	
3	Santa Cruz long-toed salamander (<i>Ambystoma macrodactylum croceum</i>)	Endangered (1971)	Endangered (1967)	
4	Limestone salamander (<i>Hydromantes brunus</i>)	Threatened (1971)	none	
5	Black toad (<i>Bufo boreas exsul</i>)	Threatened (1971)	none	Scientific name now <i>Anaxyrus exsul</i>

Table 4. Fully protected fish (FGC § 5515)

	Species	CESA Status	ESA Status	Notes
1	Colorado River squawfish (<i>Ptychocheilus lucius</i>)	Endangered (1971)	Endangered (1967)	Now known as Colorado pikeminnow
2	Thicktail chub (<i>Gila crassicauda</i>)	Delisted – extinct (1980)	none	
3	Mohave chub (<i>Gila mohavensis</i>)	Endangered (1971)	Endangered (1970)	Listed as <i>Siphoteles mohavensis</i> (ESA) and <i>Gila bicolor mohavensis</i> (CESA)
4	Lost River sucker (<i>Deltistes luxatus</i> and <i>Catostomus luxatus</i>)	Endangered (1974)	Endangered (1988)	

5	Modoc sucker (<i>Catostomus microps</i>)	Endangered (1980)	Delisted – recovered (2016)	
6	Shortnose sucker (<i>Chasmistes brevirostris</i>)	Endangered (1974)	Endangered (1988)	
7	Humpback sucker (<i>Xyrauchen texanus</i>)	Endangered (1974)	Endangered (1991)	Now known as razorback sucker
8	Owens pupfish (<i>Cyprinodon radiosus</i>)	Endangered (1971)	Endangered (1967)	
9	Unarmored threespine stickleback (<i>Gasterosteus aculeatus williamsoni</i>)	Endangered (1971)	Endangered (1970)	
10	Rough sculpin (<i>Cottus asperimus</i>)	Threatened (1974)	none	

Fully protected species and CESA- or ESA-listed species differ in a couple of key ways. First, the endangered species lists are intended to be maintained according to the best available scientific information, whereas the fully protected species lists were codified by the Legislature and have not been updated. The scientific status of most of the fully protected species are not known. DFW is planning five-year reviews of CESA-listed species, with reviews completed for nine species to date, including two fully protected species (Owens pupfish, California bighorn sheep).

Second, the Department of Fish and Wildlife (DFW) may issue various take authorizations for species listed under CESA, including but not limited to, incidental take permits pursuant to FGC § 2081(b), consistency determinations pursuant to FGC § 2080.1, Voluntary Local Programs pursuant to FGC § 2086, and Safe Harbor Agreements pursuant to FGC § 2089.2. Take authorizations allow entities to undertake otherwise lawful projects that could result in the take of listed species. Permittees must implement species-specific minimization and avoidance measures and mitigate the project’s impacts. The authority for general take authorizations does not exist for California’s fully protected species. Take of fully protected species may only be allowed under approved natural community conservation plans or through legislative authorization [for example, SB 1231 (Monning), Chapter 237, Statutes of 2020; AB 2640 (Wood), Chapter 586, Statutes of 2018].

Policy considerations: The Committee may want to consider the following while evaluating this proposal:

- 1) Should the Legislature reject this proposal and retain the fully protected species lists in order to provide a higher level of protection to these species?

- 2) Why are the seven species proposed to be listed as threatened under CESA, as opposed to endangered?
- 3) If fully protected status is removed, should all formerly fully protected species be held to a higher mitigation standard than what is currently required under CESA?
- 4) If fully protected status is removed, should there be a required amount of time before any formerly fully protected species can be considered for delisting from CESA?
- 5) Should the Legislature similarly require listing under CESA all species that are ESA listed but not currently listed on CESA?
- 6) What is the urgency of this proposal? Regardless of the merit of the provisions of this proposal, it is not clear why this must be done as part of the budget process.

Proposal language: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/970>

Administration factsheet: <https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/971>