

Certification of Consistency

C20173

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: Local Agency

Government Agency: Department of Water Resources
Primary Contact: You Chen (Tim) Chao
Address: 1416 Ninth Street
City, State, Zip: Sacramento, CA 95814
Telephone/Fax: 916-651-8137
E-mail Address: youchen.chao@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

Will Approve / Will Carry Out / Will Fund

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project

Title: Rio Vista Estuarine Research Station

B. PROPONENT CARRYING OUT COVERED ACTION (If different than State or Local Agency):

Proponent Name: Department of Water Resources
Address: 1416 Ninth Street
City, State, Zip: Sacramento, CA 95814

C. OPEN MEETING LAWS

Agencies whose actions are not subject to open meeting laws (Bagley-Keene Open Meeting Act [[Gov. Code sec 11120 et seq.](#)] or the Brown Act [[Gov. Code sec 54950 et seq.](#)]) must post their draft certification on their website and in their office for public review and comment, and mail to all persons requesting notice (Administrative Procedures Governing Appeals, Rule 3). A state or local public agency that is subject to open meeting laws is encouraged to post the draft certification on their website and in the office for public review and comment and to mail to all persons requesting notice.

Any state or local public agency that is subject to open meeting laws with regard to its certification is also encouraged to take those actions. It is encouraged to upload any evidence that the project, plan or program went through for public review and comment as part of a Bagley-Keene or Brown Act meeting.

Is your agency subject to open meeting laws (Bagley-Keene Open Meeting Act [Gov. Code sec 11120 et seq.] or the Brown Act [Gov. Code sec 54950 et seq.]? (Note: Select "Yes" if your agency or organization is subject to open meeting laws. Select "No" if your agency or organization is not subject to open meeting laws.)

Please attach any supporting evidence of the public review and comment period by clicking the upload button. Such evidence could include but is not limited to: a meeting agenda and attachment demonstrating that this certification was made publicly

available, a screenshot with date and link to a website where the materials were posted, or other similar documentation.

Note: Any public comments received during this process must be included in the record submitted to the Council in case of an appeal.

D. COVERED ACTION SUMMARY: (Project Description from approved CEQA document may be used here)

The proposed Estuarine Research Station (ERS) in Rio Vista is a component of Alternative 2 in the FEIR/FEIS. The Rio Vista ERS component under Alternative 2 for which approval is requested includes approximately 116,000 square feet of buildings for office, laboratories, warehouse, and covered boat storage. In addition there will be open yard storage for equipment, and a marina for approximately 23 vessels. The purpose of the proposed Rio vista ERS is to consolidate ongoing Interagency Ecological Program (IEP) research and monitoring activities throughout the San Francisco Bay-Sacramento-San Joaquin River Delta (Bay-Delta). IEP monitoring activities assist DWR in complying with conditions of its water right permits and licenses. Only the marina component of the proposed action is within the Primary Delta Boundary (Legal Delta), and most of the project (i.e. Buildings) is not within either the Primary or Secondary Boundaries.

E. STATUS IN THE CEQA PROCESS: NOD has been filed

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2014122017

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 01/01/0001

ANTICIPATED END DATE: (If available) 01/01/0001

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$90000000

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM: NA

J. Supporting Documents:

[NOTICE OF INTENT TO SUBMIT A CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

[G P1/Cal. Code Regs., tit. 23, § 5002](#) - Detailed Findings to Establish Consistency with the Delta Plan.

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and 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 listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), 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.

Specific requirements of this regulatory policy:

a. [G P1\(b\)\(1\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(1\)](#) - Coequal Goals

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)**, 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.

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification:

b. [G P1\(b\)\(2\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\)](#) - Mitigation Measures

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (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. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: FEIR_FEIS for this project has mitigation measures that meet, exceed, or equivalent to those within the Delta Plan. [1a_Rio Vista Estuarine Research Station Mitigation Measures.pdf](#), [Final_Vol1_DRS_EIR_EIS.pdf](#), [Final_Vol2_DRS_EIR_EIS.pdf](#), [Final_Vol3_DRS_EIR_EIS.pdf](#)

c. [G P1\(b\)\(3\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(3\)](#) - Best Available Science

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see [Appendix 1B](#), which is referenced in this regulatory policy. Note that this requirement may 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.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

The Interagency Ecological Program (IEP) has been conducting scientifically rigorous ecological research and monitoring studies in the Delta since the 1970s. Example IEP scientific products include: long-term species abundance and water quality datasets; publications (e.g. peer-reviewed journals, newsletters, technical reports); and synthesis studies and development of conceptual models. All IEP scientific efforts are aimed at providing relevant and timely ecological information to improve our knowledge of the Bay-Delta ecosystem and support management actions. The best available science was used when planning the construction and design of the ERS to minimize impacts to endangered species and the environment (see EIR/EIS for details regarding potential impacts and mitigation measures). As discussed in the Adaptive Management section, Invasive Aquatic Vegetation (IAV) accumulation in the marina may become an issue that will benefit from an adaptive management approach informed by the best available science. IEP is currently conducting a study focused on IAV management options and their ecosystem effects. Data and research from this study will enable us to use the best available science in support of effective adaptive management to control IAV within the ERS marina.

d. [G P1\(b\)\(4\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(4\)](#) - Adaptive Management

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see [Appendix 1B](#), which is referenced in this regulatory policy. Note that this requirement may 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.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

Since the scope of the proposed project doesn't involve ecosystem restoration or water management related covered actions, the project team believes the adaptive management requirement of the G P1(c) is not required for this project. However, this project will support, inform, and facilitate adaptive management efforts in the Delta. The Interagency Ecological Program (IEP) is a consortium of nine State and federal agencies that coordinately and collaboratively conduct ecologically relevant monitoring, research, and synthesis studies focused on the Bay-Delta ecosystem. The Rio Vista Estuarine Research Station (ERS) will serve as a centralized Delta research facility for IEP-affiliated staff and their scientific and monitoring activities that inform adaptive management. These activities are designed and implemented to reduce scientific uncertainties and increase our current state of knowledge to support adaptive management. For example, the long-term fish population and water quality compliance monitoring conducted year-round by IEP informs adaptive management decisions regarding water project operations, endangered species take, and

habitat restoration efforts. The aggregation of staff and resources at the ERS will facilitate improved interagency collaboration as well as increased sharing of monitoring and/or research data and scientific ideas. There is a strong expectation that IEP will be one of the leaders in the collection of scientific data to support current and future adaptive management in the Delta. Collectively, the increased coordination and collaboration of research and monitoring efforts brought about by having a critical mass of interagency scientific staff in a single location will enable IEP to better inform an adaptive management framework to support management actions in the Delta. While the ERS will facilitate improved scientific collaborations and data-gathering efficiency, the station design itself benefits from an adaptive management approach. Specifically, accumulation of invasive aquatic vegetation (IAV; e.g. water hyacinth, Brazilian waterweed) was identified in the ERS Environmental Impact Report/Environmental Impact Statement (EIR/EIS) as a potential concern for the marina. The proposed marina design includes installing a debris deflector at the northern end of the marina to limit floating debris accumulation. Additionally, mechanical removal of vegetation will occur as needed. Despite these planned measures, IAV may become an issue that will benefit from an adaptive management approach and will be addressed through existing monitoring activities and ongoing science collaboration efforts. Towards this goal, IEP has begun to take a major role in the adaptive management and science of IAV in the Delta. Specifically, IEP has formed an Aquatic Weed Project Work Team as a forum for Delta aquatic weed science, and to help evaluate aquatic weed management actions. Secondly, IEP in conjunction with State Parks Division of Boating and Waterways are conducting a substantial adaptive management evaluation of aquatic weeds. The goal of the effort is to determine the degree to which IAV management can help to improve aquatic habitat conditions for endangered fishes. Our expectation is that these IEP efforts will inform an adaptive management approach for IAV within the ERS marina.

DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not involve water that is exported from, transferred through, or used in the Delta.

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#) - Transparency in Water Contracting

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not involve entering into or amending water supply or water transfer contracts subject to DWR Guideline 03-09 and/or 03-10 (each dated July 3, 2003), (Appendix 2A).

DELTA PLAN CHAPTER 4

[Cal. Code Regs., tit. 23, § 5002, subd. \(c\)](#) - Conservation Measure

Cal. Code Regs., tit. 23, § 5002, subd. (c) provides that 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 the regulatory policies listed under Delta Plan Chapter 4 of this Form (i.e. sections 5005 through 5009) 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.

Is the covered action consistent with this portion of the regulatory policy?

Answer Justification:

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#) - **Delta Flow Objectives**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not significantly affect flow in the Delta.

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#) - **Restore Habitats at Appropriate Elevations**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not include habitat restoration.

[ER P3 / Cal. Code Regs., tit. 23, § 5007](#) - **Protect Opportunities to Restore Habitat**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action is outside of the priority habitat restoration areas depicted in Appendix 5.

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#) - **Expand Floodplains and Riparian Habitats in Levee Projects**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not construct new levees or substantially rehabilitate or reconstruct existing levees.

[ER P5 / Cal. Code Regs., tit. 23, § 5009](#) - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: The main objectives of this proposed action are to establish a research station in the general Bay-Delta area to facilitate conducting monitoring and research, and to conduct monitoring and research on the Bay-Delta's aquatic resources. There is little risk of introduction of non-native species. Also, in addition to ongoing science collaborations and monitoring actions, mitigation measures are in place for a new marina and protection of endangered species from non-native invasive species. [ERP5 Final_Vol1_DRS_EIR_EIS.pdf](#)

DELTA PLAN CHAPTER 5

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - **Locate New Urban Development Wisely**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: The water front improvements are within the Legal Delta and the landside improvements are within the sphere of influence of the Legal Delta. In addition to extensive public engagements, the project team has coordinated

in a collaborative manner with federal, state, and local agencies during the process of planning and designing this project. Coordinating agencies include, but are not limited to, the Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Coast Guard, California Department of Fish and Wildlife, California State Lands Commission, Delta Protection Commission, and the City of Rio Vista, etc. In addition to having received positive feedback and support from various entities, as findings listed in the FEIR/FEIS, the proposed action would be consistent with applicable land use plans and policies. [DPP1_Land Use and Planning_Ch 13 FEIR_FEIS.pdf](#)

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#) - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not involve the siting of water management facilities, ecosystem restoration, or flood management infrastructure.

DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - **Prioritization of State Investments in Delta Levees and Risk Reduction**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not involve discretionary State investments in Delta flood risk management including levee operations, maintenance, and improvements.

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#) - **Require Flood Protection for Residential Development in Rural Areas**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not involve new residential development of five or more parcels.

[RR P3 / Cal. Code Regs., tit. 23, § 5014](#) - **Protect Floodways**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not encroach within any floodway.

[RR P4 / Cal. Code Regs., tit. 23, § 5015](#) - **Floodplain Protection**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: The covered action does not encroach in any of the following floodplain areas:

- (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.

12/19/2017