

Certification of Consistency

C20141

Step 1 - Agency Profile

A. GOVERNMENT AGENCY:

Local Agency

Government Agency: Department of Water Resources
Primary Contact: Sean Bagheban
Address: 1416 9th Street, Suite 1601
City, State, Zip: Sacramento, CA 95814
Telephone/Fax: (916) 657-4389
E-mail Address: seanb@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: Sherman Island Whale's Mouth Wetland Restoration Project

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

Proponent Name: Department of Water Resources
Address: 1416 9th Street, Suite 1601
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.)

Yes

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)

Project Description: The Sherman Island Whale's Mouth Wetland Restoration Project (Project) will restore approximately 600 acres of palustrine emergent wetlands, within an 877-acre Project boundary, on a nearly 975-acre parcel of property on Sherman Island that is owned by the California Department of Water Resources. The property is currently managed for flood irrigated pasture land which includes a regular and extensive disturbance regime associated with field prepping, disking, and grazing. Approximately 550,000 cubic yards of material will be redistributed within the site, which is necessary to sculpt the swales and to create berms for this wetland habitat area. An additional import of approximately 80,000 cubic yards of material will be required to fill the existing scour pond and bring the site up to grade for the native upland habitat restoration proposed in that area. Approximately 27 water control structures will be installed. The interior of the site will be divided up into as many as seven managed wetland units separated by 47,000 lineal feet of proposed interior berms and crossed with excavated conveyance swales, in order to facilitate appropriate water and vegetation management capabilities. Water levels in each unit will be managed independently to restore the desired emergent wetland conditions throughout the site. When the Project is completed, water is proposed to be maintained on the Project site year-round, effectively creating a permanent wetland. Post construction, operation of the site will include water delivery via the existing gravity siphons along the San Joaquin River levee and seepage. Water will be conveyed within the wetland system via gravity flow from the higher elevation units to the lower elevation units until it is discharged from the site into the existing drainage canal that flows to the east. Pending permit approvals, construction will begin in August 2014. Initial site preparation includes vegetation removal prior to earth moving activities. Construction will stop by 15 October 2014. If work is not completed in 2014, it will commence again in May 2015 and May 2016 (if necessary). Work will be scheduled to accommodate approved giant garter snake work windows. Earth moving activities will be performed by a licensed contractor, utilizing agricultural scrapers and excavators to construct the site's interior and perimeter berms, loafing islands, swales and potholes, while an excavator and/or backhoe will be used to construct conveyance ditches and install necessary piping. The ultimate outcome of the Project will be hundreds of additional acres of freshwater emergent wetlands. Each wetland unit will be a mosaic of open water channels and emergent vegetation comprised predominantly of California bulrush (*Schoenoplectus/Scirpus californicus*) and narrow leaved cattails (*Typha angustifolia*). Other native plant restoration components will include installation of native trees and shrubs compatible with their respective hydrologic regime as well as a substantial amount of upland transitional area, all of which will provide a diversity of habitat structure and function. Project Location: The approximately 877- acre Project is located on Sherman Island, Assessor's Parcel Number 158-0090-016-0000 (this parcel comprising a total of 975 acres), in southwest Sacramento County, CA and is shown on the Antioch North, CA USGS topographic quadrangle. This unsectionalized portion of Sherman Island would be considered to be generally located within Sections 4, 5, 8, and 9, Township 2N Range 2E. The Project is located approximately 12.0 miles southwest of the City of Isleton, north of the city of Antioch, and west of Highway 160. The approximate center of the site is located at Latitude 38°2'29.02"N, Longitude 121°46'24.56"W.

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2013092025

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 08/01/2014

ANTICIPATED END DATE: (If available) 12/01/2016

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: 5000000

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

[Whales Mouth - Final signed MND with all appendices.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 12 Revised: July 2019 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?

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:

A list of project specific mitigation measures, as identified in the CEQA document, is attached (mitigation measures.pdf). Another document (Whale's Mouth - All Mitigation Measures.pdf) is a comprehensive list of all mitigation measures extracted from the Delta Plan PEIR. Consistency with appropriate mitigation measures for this project is shown in this document. [mitigation measures.pdf](#), [Whales Mouth - All Mitigation Measures.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:

Previous studies conducted by the California Department of Water Resources, in cooperation with other agencies, show subsidence reversal and carbon sequestration can be achieved through permanently flooded wetlands. A list of research publications showing these outcomes is attached and similar techniques are incorporated into this project. [BAS Reference List.pdf](#)

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:

The West Delta Program receives continual funding from the State Water Contractors, which will be used to fund the operations and maintenance elements of this project. Both a Habitat Management Plan that is contained within the project specific CEQA document and an Adaptive Management Activities table are attached. [Extracted Habitat Management](#)

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?

Yes

Answer Justification:

The attached project site map identifies the location of this project and is consistent with the elevation map identified in this section. [project map.pdf](#)

[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:

All siphons delivering water to the project are screened and no invasive fish species will be introduced. The attached Habitat and Water Management Plan describes spraying techniques to control invasive weed species. Invasive species currently on the project site will be removed and destroyed as part of the project. [Extracted Habitat Management Plan for Whales Mouth.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?

N/A

Answer Justification:

The covered action does not involve new residential, commercial, or industrial development.;

[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?

Yes

Answer Justification:

This project is consistent with this policy and will implement the attached Sac/Yolo Vector Control BMPs. [Extracted Vector Control BMPs for Whale's Mouth 5-30-14.pdf](#)

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.
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08/06/2014