

Certification of Consistency

C20183

Step 1 - Agency Profile

A. GOVERNMENT

AGENCY:

Local Agency

Government Agency: Department of Parks and Recreation - Division of Boating and Waterways

Primary Contact: Edward J. Hard

Address: One Capitol Mall

City, State, Zip: Sacramento, CA 95814

Telephone/Fax: 19163271865

E-mail Address: jeffrey.caudill@parks.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:

Program

Title: Aquatic Invasive Plant Control Program (AIPCP)

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

Proponent Name: Edward J. Hard

Address: One Capitol Mall

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)

The AIPCP is an adaptively managed program designed to keep waterways navigable by controlling the growth and spread of invasive aquatic plants in the Sacramento-San Joaquin Delta (Delta), its surrounding tributaries, and Suisun Marsh in support of the environment, economy, and public health. There are currently eight floating and submersed aquatic weed species in the AIPCP. The AIPCP incorporates all previous Delta programs conducted by DBW, including the Water Hyacinth Control Program (WHCP), Spongeplant Control Program (SCP) and Egeria densa Control Program (EDCP), and new invasive plant species incorporated through the process defined by Assembly Bill (AB) 763. The AIPCP project area includes eleven counties that encompass much of the Sacramento-San Joaquin Delta and its upland tributaries. The AIPCP is an integrated pest management program including three primary types of control methods: herbicides, physical/mechanical controls, and biological control agents. Please see the Biological Assessment, Section 3: Description of the Proposed Action for more information. The broad benefits of the AIPCP to the Delta ecosystem are likely to be significant and lasting. By minimizing the spread of invasive aquatic plants, AIPCP activities will lead to five primary interrelated benefits: (1) food web benefits; (2) reduced physiochemical impacts; (3) biological benefits; (4) reduced potential for significant detrimental impacts, and (5) increased ecosystem restoration opportunities. The AIPCP is consistent with Delta Plan and the Collaboration Guidelines for Delta AIP Control (Guidelines); please see the uploaded documents that demonstrate alignment with the Delta Plan and Guidelines. <http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=8df8cc2a-55f0-4f2d-bb3e-c03da0b84a1a>

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2017082031

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 03/01/2018

ANTICIPATED END DATE: (If available) 12/31/2022

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$13,000,000

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

J. Supporting Documents:

[AIPCP Consistency with Delta Plan MM Crosswalk20180108.docx](#), [AIPCP Biological Assessment - 10-13-2017.pdf](#), [2015-0132 Final.pdf](#), [Collaboration Guidelines 20180125.pdf](#), [EDCP Operations Management Plan - April 30, 2014 DRAFT.pdf](#), [AIPCP Environmental Assessment of Selected Methods.pdf](#), [AIPCP Environmental Impact Report - 01-24-2018.pdf](#), [AIPCP PEIR - Other Maps.pdf](#), [AIPCP PEIR - Vol. II.pdf](#), [WHCP-SCP Operations Management Plan - May 15, 2014.pdf](#), [Full Compliance Binder for PEIR without labels.pdf](#), [AIPCP PEIR - 21 Fish Presence-Absence Maps.pdf](#), [AIPCP PEIR - Vol. III - 01-24-2018.pdf](#)

Step 3 - Consistency with the Delta Plan

[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:

Please see uploaded Consistency Crosswalk. The AIPCP is consistent with applicable mitigation measures. [AIPCP Consistency with Delta Plan MM Crosswalk20180108.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:

Please see uploaded PEIR and Biological Assessment, which document the best available science about the effectiveness and impacts of the AIPCP control methods. Throughout the AIPCP planning process, DBW consulted scientific journals, government reports, government web pages, and subject matter experts in order to assess the most updated scientific information about treatment methods, including their potential positive and negative impacts on public health, non-target species, and the environment. Note that the PEIR cites 259 references, and the BA cites 622 references (there is overlap between the references cited in these two documents).
<http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=61d37641-d356-4b38-9bb7-a692890f2e57>
<http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=67b58d5d-a486-4a68-b878-3bf700c59e74>

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:

Please see uploaded PEIR and Biological Assessment, which document the AIPCP's multi-year planning, implementation, and monitoring actions in support of adaptive management that are targeted to site-specific conditions. Within the PEIR, please see Appendix 2a AIPCP Adaptive Management Plan and Selected Program Alternative (p. 2-8 through 2-15; especially Exhibit 2-7 and the discussion of Demonstration Research Zones that support adaptive management) and Mitigation Measure #8 (page 2-47). Within the BA, please see sections entitled "Overall Framework" (p. 3-31 through 3-39), "Prioritization of Treatment Sites and Methods" (p. 3-49 through 3-54), and "2018 AIPCP Integrated Pest Management Plan" (BA Appendix 3). The AIPCP has adequate resources to implement an adaptive management program.
<http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=61d37641-d356-4b38-9bb7-a692890f2e57>
<http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=67b58d5d-a486-4a68-b878-3bf700c59e74>

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.; note: The covered action does not export water from or transfer through the Delta. The covered action does utilize water in the Delta, but the following conditions do not apply: water suppliers that would receive water have not failed to contribute to reduced reliance in the Delta and water suppliers would not receive water as a result of the covered action. The covered action will not affect whether or not water suppliers receive water from 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).; note: The covered action does not involve contracting for water from the State Water Project and/or the Central Valley Project.

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.; note: 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.; note: The covered action does not directly restore habitats. DBW does coordinate and collaborate with the Department of Water Resources (DWR) to support its ecosystem restoration, but DBW does not conduct restoration directly. AIPCP does not select specific restoration methods that are utilized by DWR in these locations. DWR follows required guidelines

in determining restoration actions.

[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?

Yes

Answer Justification:

The covered action includes avoidance and mitigation measures to minimize any adverse impact on the opportunity to restore habitat. In addition to being consistent with this policy to avoid significant adverse impacts, the AIPCP actively supports other state agency efforts to restore habitat. Aquatic invasive plants have a plethora of negative effects, including out-competing native plants, negative effects on native zooplankton and plankton, low dissolved oxygen under mats, negative effects on birds, ecosystem engineering effects, providing mosquito habitat, and impeding navigation and water pumps. As with all invasive species control programs, AIPCP activities seek to minimize the potential effects of control while obtaining the benefits of control. The broad benefits of the AIPCP to the Delta ecosystem are likely to be significant and lasting. By minimizing the spread of invasive aquatic plants, AIPCP activities will lead to five primary interrelated subsidies: (1) food web benefits; (2) reduced physiochemical impacts; (3) biological benefits; (4) reduced potential for significant detrimental impacts, and (5) increased ecosystem restoration opportunities. Please see the Biological Assessment section entitled “Subsidies of the AIPCP” (p. 6-128 through 6-132) for further discussion of how the AIPCP protects and enables opportunities to restore habitats. Please also see the Statement of Overriding Considerations in the PEIR Volume III. [AIPCP PEIR - Vol. III - 01-24-2018.pdf](#)

[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.; note: 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:

This policy applies because the covered action has a reasonable probability of introducing or improving habitat conditions for nonnative invasive species. However, the covered action employs numerous safeguards and best management practices that are consistent with this policy. Such safeguards include the use of curtains to contain plant fragments from treated plants; off-site disposal of removed plant biomass on land where the plants will dry out and die; and training its staff and marina operators about best practices to reduce the spread of invasive plants. Furthermore, the AIPCP prioritizes early identification of invasive plants in order to target treatments before the invasive plants spread further throughout the project area. AIPCP staff take every effort to minimize the spread and introduction of invasive aquatic plants. See PEIR Exhibit 2-19, Mitigation Measure 11 for more information. <http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=67b58d5d-a486-4a68-b878-3bf700c59e74>

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.; note: 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?

N/A

Answer Justification:

The covered action does not involve the siting of water management facilities, ecosystem restoration, or flood management infrastructure.; note: The covered action does not involve the siting of water management facilities, ecosystem restoration, or flood management infrastructure. DBW does coordinate and collaborate with the Department of Water Resources (DWR) to support its ecosystem restoration, but DBW does not site the restoration projects.

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.; note: 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.; note: The covered action does not involve new residential development.

[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.; note: The covered action does not involve encroachment in a floodway or a regulated stream. In addition, most AIPCP actions occur during the off-season when flooding is not a concern. The AIPCP will use certain control methods that may have the potential to impede flow (such as booms, curtains, and floating barriers), however the AIPCP will use them only in locations where they will not unduly impede the free flow of water or jeopardize public safety. Please refer to the PEIR Project Description for more information about the use of booms and barriers (PEIR p. 2-33). As explained in the Mitigation Measure crosswalk section 4.4, AIPCP's use of floating barriers and screens/curtains in certain locations could have minimal and temporary impacts on flow. However, screens and curtains are made of porous materials that will continue to allow water flow and sediment to occur without significant changes. In addition, curtains will not extend beyond one meter water depth.

<http://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=67b58d5d-a486-4a68-b878-3bf700c59e74> [AIPCP Consistency with Delta Plan MM](#)

[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.; note: The covered action does not involve encroachment in the following floodways: the Yolo Bypass in the Delta, the Cosumnes River-Mokelumne River Confluence, or the Lower San Joaquin River Floodplain Bypass Area.

02/02/2018