

Certification of Consistency

C20235

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: Local Agency
Government Agency: California Department of Fish and Wildlife
Primary Contact: Erin Chappell
Address: 2825 Cordelia Road, Suite 100
City, State, Zip: Fairfield, CA 94534
Telephone/Fax: (707) 428-2002
E-mail Address: awill@ducks.org

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: Will Carry Out

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project
Title: Montezuma Slough Fish Screen Replacement Project

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

Proponent Name: California Department of Fish and Wildlife
Address: 2825 Cordelia Road, Suite 100
City, State, Zip: Fairfield, CA 94534

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.) No

If your agency is 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.](#)]) **did your agency, at least 10 days prior to the submission of a certification of consistency to the Delta Stewardship** No

Council, post the draft certification on your website and in the office for public review and comment, and mail the draft certification 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.

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 Montezuma Slough Fish Screen Replacement Project (project) proposes to improve water control infrastructure and associated fish screens in the Grizzly Island Wildlife Area (GIWA). The GIWA is owned by the California Department of Fish and Wildlife (CDFW) and is located within the Suisun Marsh, the largest contiguous estuarine marsh in the United States. The purpose of the project is to meet the water delivery and operational needs of the GIWA, enhance interior water conveyance with the installation of additional water control structures, and protect native resident and anadromous fish populations located in Montezuma Slough. The project would replace the existing deteriorated and outdated intake and fish screen facilities with modern technology and corrosive resistant design and would relocate the water intake and fish screen facilities to increase water delivery reliability. In its current location the water intake would convey water into a deteriorating interior ditch that is subject to berm failure. If the berms adjacent to the delivery ditch are further damaged, water delivery to much of GIWA could be temporarily compromised until the berms are repaired. The new location would bypass the interior ditch and deliver water directly into Grizzly Island Ditch. Grizzly Island Ditch is the main water conveyance throughout the GIWA and provides improved access for CDFW maintenance staff, thus improving the overall reliability of water delivery on GIWA.

[MontezumaSlough_DSC_062723.pdf](#)

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2003112039

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 05/01/2024

ANTICIPATED END DATE: (If available) 12/31/2025

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$5,000,000

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:

[MontezumaSlough_DSC_062723.pdf](#), [MontezumaSlough_DSC-ApdxA_DesignPlanSet.pdf](#), [MontezumaSlough_DSC-ApdxD_AdaptiveManagementPlan.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?

Yes

Answer Justification:

The purpose of the project is to meet the water and operational needs of GIWA, enhance interior water conveyance with the installation of additional water control structures, and protect anadromous fish located in Montezuma Slough through the replacement of existing deteriorated and outdated fish screened intake structures with a current design. These actions would enhance wetland management capabilities within the Suisun Marsh. As such the project is in alignment with the coequal goals of the Delta Plan to provide more reliable water supply and protect, restore, and enhance the Delta ecosystem.

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:

The SMP Final EIS/EIR was prepared in compliance with NEPA and CEQA and certified on December 22, 2011 (State Clearinghouse No. 2003112039). A CEQA Addendum was prepared to evaluate the potential effects of the proposed project, including the use of sheet pile cofferdams in Montezuma Slough, and determined that the proposed modifications would not result in any new or substantially more significant environmental impacts than those previously identified in the EIS/EIR. The project will implement all applicable environmental commitments and mitigation measures identified in the EIS/EIR and no subsequent environmental review is required pursuant to Section 15162 of the CEQA Guidelines. A crosswalk table was prepared to demonstrate consistency of all mitigation measures included in the Delta Plan EIR MMRP with environmental commitments and/or mitigation measures for the project. See Appendix B of the attached.

[MontezumaSlough_DSC_062723.pdf](#)

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

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see [Appendix 1A](#), which is referenced in this regulatory policy.

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

Yes

Answer Justification:

CDFW is committed to utilizing the best available science to design and construct the project. Ongoing research related to waterfowl biology and habitat management continues to progress and provides greater insight on how to manage wetlands. The project design and adaptive management plan are based on best available science, as demonstrated by the following elements: ? Well-stated objectives ? Conceptual models of habitat requirements of sensitive fish and wildlife species ? Best professional judgment of experts The SMP is a science-based management plan for the Suisun Marsh, including the project area, and addresses water quality, fish entrainment, and the provision of wetlands for migratory waterfowl and other wetland-dependent species (US Bureau of Reclamation, 2011). The project is designed to improve water conveyance throughout managed wetlands in GIWA. Improvements to water control structures enhance water quality, vegetation management, and improve quality of wetland habitat for waterfowl and other wildlife and plant species. In addition, the project would replace deteriorated fish screens with a modernized intake system designed by Intake Screens, Inc., an experienced leader in the field. The new fish screens would be brushed cylinder, self-cleaning, retrievable track systems proven to protect anadromous and resident fish from entrainment and improve access for inspection and maintenance (Intake Screens, Inc., 2023). The fish screen has been designed to meet flow rate criteria for delta smelt and salmonids established by the SMP. The project design has been prepared in close partnership with CDFW wildlife area managers and biologist, engineers, and other fish and wetland habitat experts. A list of current best available science applicable to the project is included in Appendix C of the attached. [MontezumaSlough_DSC_062723.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 project implements the SMP, a collaborative effort of federal, state, and local agencies working with scientists and the public to protect and enhance Suisun Marsh. The project is a result of adaptive management practices in the Suisun Marsh and would replace deteriorating water control infrastructure with updated design to maintain wetland habitats and protect fish species. Relocation of the water intake and fish screen facilities in Montezuma Slough will improve water reliability by avoiding a deteriorating ditch, subject to berm failure, and providing more direct and reliable water conveyance. Operation of the project would assure continued implementation of adaptive management through regular inspection, maintenance, and repair. CDFW maintains and operates GIWA and has adequate staff and fiscal resources to operate and maintain water control infrastructure installed under the project. In addition, CDFW provided input on project design to ensure project operation allows for efficient use of resources. An Adaptive Management Plan has been prepared for the project and is included in Appendix D attached. [MontezumaSlough_DSC-ApdxD_AdaptiveManagementPlan.pdf](#)

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 project does not involve the export, transfer, or use of water in the Delta by a water supplier that has failed to contribute to reduced reliance on the Delta and improved regional self-reliance. As such, Policy WR P1 is not applicable.

[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 project is not part of the State Water Project and/or Central Valley Project and would not affect the contracting process for water from the State Water Project and/or Central Valley Project. As such, Policy WR P2 is not applicable.

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?

N/A

Answer Justification:

The project does not include a conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan. As such, this provision is not applicable.

[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 project is not part of the State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives. The project would not affect flows. As such, Policy ER P1 is not applicable.

[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:

Water conveyance enhancements recognized by the project would support emergent wetland habitats within the sea level rise accommodation band, consistent with the habitats identified for appropriate elevations in Appendix 4 of the Delta Plan. However, the project itself does not propose habitat restoration. As such, Policy ER P2 is not applicable.

[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 project is located within the Suisun Marsh, a priority habitat restoration area identified in the Delta Plan. The project supports habitat restoration opportunities within Suisun Marsh by improving water control infrastructure to meet the water delivery and operational needs of the GIWA, enhance interior water conveyance with the installation of additional water control structures, and protect native resident and anadromous fish populations located in Montezuma Slough. The project would result in the replacement of dilapidated fish screens with upgraded fish screens that meet current flow criteria and would protect longfin smelt, delta smelt, and spring- and winter-run salmonids, and other fish from entrainment. The project would not result in significant adverse impacts to the opportunity to restore habitat in priority habitat restoration areas. As such, the project is consistent with Policy ER P3. In addition, Policy ER P3 covers the project as a proposed action within a priority habitat restoration area.

[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 project is not a levee project and would not affect levees along the Sacramento River, San Joaquin River, North or South Forks of the Mokelumne River, or involve any urban levee improvement project in West Sacramento or Sacramento. As such, Policy ER P4 is not applicable.

[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?

N/A

Answer Justification:

Enhanced water conveyance resulting from the project would allow for improved management of existing emergent wetlands to favor native species and limit growth of nonnative invasive species. However, the project would not alter habitats within GIWA or Montezuma Slough. As such, Policy ER P5 is not applicable.

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:

This project is a water facility improvement project and does not involve any residential, commercial, or industrial development. As such, Policy DP P1 is not applicable.

[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:

The project includes the installation of water control infrastructure within Grizzly Island Wildlife Area, an unincorporated portion of Solano County, owned and managed by CDFW. The Solano County General Plan designates the project area as Marsh within a Resource Conservation Overlay (Solano County, 2008). The proposed water control infrastructure is compatible with the existing hydrology of the managed wetlands in GIWA. Installation of new infrastructure is consistent with the Solano County General Plan land use designations and policies. As such, the project is consistent with Policy DP P2. In addition, Policy DP P2 covers the project as a proposed action that involves the siting of water management facilities.

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 project is funded by the CDFW and the California Wildlife Conservation Board and is located within GIWA, a complex of seasonal wetlands managed for wildlife habitat and recreational uses. The project does not involve discretionary State investment in Delta flood risk management. As such, Policy RR P1 is not applicable.

[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 project is located within GIWA and does not propose new residential development. As such, Policy RR P2 is not applicable.

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

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

Yes

Answer Justification: The project would involve the construction of water intake and fish screen facilities in Montezuma Slough. As shown on the Best Available Maps completed by DWR in 2008, Montezuma Slough is not a designated floodway or regulated stream. The Federal Emergency Management Agency classifies Montezuma Slough and the adjacent project area within Zone AE, a floodway with a base elevation of 10 feet. Replacement water control infrastructure is proposed by the project are of similar scale to existing facilities in Montezuma Slough and would not impede watercraft from navigating through the channel. The project would not unduly impede the free flow of water or jeopardize public safety. As such, the project is consistent with Policy RR P3. In addition, Policy RR P3 covers the project as a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream.

[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 project is in the Suisun Marsh and would not involve any encroachment in the Yolo Bypass, Cosumnes River-Mokelumne River Confluence, or Lower San Joaquin River Floodplain Bypass. As such, Policy RR P4 is not applicable.

10/27/2023