Certification of Consistency

C20201

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency

Government Agency:	Contra Costa County Flood Control and Water Conservation District
Primary Contact:	Tim Jensen
Address:	255 Glacier Drive
City, State, Zip:	Martinez, CA 94553
Telephone/Fax:	(925) 313-2192
E-mail Address:	claudia.gemberling@pw.cccounty.us

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: Three Creeks Parkway Restoration Project

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

Proponent Name:	Tim Jensen, Contra Costa County Flood Control and
Address:	255 Glacier Drive
City, State, Zip:	Martinez, CA 94553

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**	

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.

CCC BOS Agenda_9-27-16 (CEQA IS-MND).pdf, CCC BOS Agenda_3-27-18 (Addendum 1).pdf, CCC BOS Agenda_11-12-19 (Addendum 2).pdf

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

The Three Creeks Parkway Restoration project is a multi-benefit flood control and creek restoration project proposed by the Contra Costa County Flood Control District and Water Conservation District ("District" or "CCCFCD") and American Rivers, a non-profit organization that protects wild rivers and restores damaged rivers. The project proposes to improve flood conveyance capacity and restore native vegetation along an approximately 4,000 linear feet section of Marsh Creek located in Brentwood and included the improvement of flood conveyance capacity by widening the channel with a floodplain and floodplain benches and restoration of native vegetation of the creek banks and floodplain. When implementation is complete, the project site will include up to 1.0 acres of frequently inundated floodplain (seasonal wetland), 1.87 acres of woody riparian vegetation, and 1.87 acres of grasslands and native scrub. The project will also enhance habitat and recreation within the watershed. The CEQA Initial Study/Mitigated Negative Declaration (IS/MND) was adopted by the Contra Costa County Board of Supervisors on September 27, 2016, but was not approved at that time. Subsequent to the adoption of the 2016 IS/MND, American Rivers and the District proposed a few additions that were evaluated in Addendum 1: (1) incorporation of an existing water quality basin adjacent to the lower reach of Marsh Creek and improvements to the adjacent City of Brentwood Sungold Park, (2) use of an adjoining parcel in the middle reach as a staging area and to place excavated materials, (3) construction of a clear-span pedestrian bridge, and (4) use of creek crossings during construction. These proposed additions included a total of approximately 16 acres. The County Board of Supervisors approved Addendum 1 on March 27, 2018. Addendum 2 identified and analyzed potential impacts of project components that were not specifically identified and described in the project description of the IS/MND and Addendum 1 as well as incorporation of additional project features: (1) abutments for the proposed pedestrian bridge identified in Addendum #1 and spur trail from the Marsh Creek Regional Trail to the proposed pedestrian bridge, (2) incorporation of a City of Brentwood-owned parcel for a future pocket park ("Dainty Triangle Park"), and (3) permanent property acquisitions for the project features identified in the IS/MND and Addendums 1 and 2. CEQA IS-MND+Addendums 1 and 2+MMRP.pdf

E. STATUS IN THE CEQA PROCESS:	NOD has been filed
F. STATE CLEARINGHOUSE NUMBER:(if applicable)	2016082008

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available)	04/16/2020
ANTICIPATED END DATE: (If available)	02/28/2021

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST:	7428371

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION

WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM:

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:

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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: Mitigation measures for this project is explicitly described in its Final Initial Study/Mitigated Negative Declaration (IS/MND), Mitigation, Monitoring and

Reporting Program (MMRP) and attached to this certification application (Section 3b_MM_MMRP). The project has been specifically developed to be consistent with the Delta Plan as it is a multi-benefit project that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, the Delta Plan's 2013 MMRP has been reviewed and cross-referenced with the project's MMRP and the two documents are generally consistent across resources areas. Further, this project directly supports the Delta Plan's co-equal goals as well as the following policies: General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan - this has been done through review of the MMRP, use of best available science in future restoration and flood management planning, and development of an adaptive management framework. A comparison of the Delta Plan's 2018 MMRP and the this project's MMRP is attached (Section3b_MM_Comparison) and shows the mitigation measures are equal or more effective than the mitigation measures for the Delta Plan's 2018 MMRP. MMRP.pdf, G_P1_MMRP Comparison to Delta Plan.pdf

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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 project has been specifically developed to be consistent with the Delta Plan as the project will reduce flood associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, the Delta Plan's 2013 MMRP has been reviewed and cross-referenced with this project's MMRP and both MMRPs are generally consistent across resource areas. In addition, this project directly supports the Delta Plan's co-equal goals as well as the following policies: General Policy 1 (GP 1): Detailed Findings to Establish Consistency with the Delta Plan - this has been done through review of the MMRP, use of best available science in future restoration and flood management planning, and development of an adaptive management framework. The attached Adaptive Management and Maintenance Plan framework (AMMP) for this project contains best available science and an extensive review of all monitoring data for the Marsh Creek watershed and associated scientific literature. The project has used best available science by incorporating restoration science into the project, including designing a floodplain and restoration project in the functional framework developed for DRERIP (Opperman 2008) and new informaton published since then. Best available science from publishing literature and relevant gray literature was

used in developing current project designs and monitoring methods. In addition, the project for water quality is building off of 15 years of water quality monitoring at seven to ten sites, where sampling has been conducted in partnership with the EPA and Central Valley RWQCB as detailed in a Quality Assurance Project Plan (QAPP) that requires EPA and CVRWQCB review technical field sampling and data management methods. Other aspects of the project's AMMP were developed to guide specific monitoring and includes 40 citations of published scientific literature and direct data sources. AMMP.pdf

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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 has been specifically developed to be consistent with the Delta Plan as the project will reduce flood associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, the Delta Plan's 2013 MMRP has been reviewed and cross-referenced with this project's MMRP and both MMRPs are generally consistent across resource areas. In addition, this project directly supports the Delta Plan's co-equal goals as well as the following policies: General Policy 1 (GP 1): Detailed Findings to Establish Consistency with the Delta Plan - this has been done through review of the MMRP, use of best available science in future restoration and flood management planning, and development of an adaptive management framework. The attached Adaptive Management and Maintenance Plan framework (AMMP) for this project provides clear guidance and specific examples. The particular metrics, thresholds and response actions listed in Table 3 of the AMMP will be implemented. AMMP.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: This is not applicable because this project will improve fresh water quality entering the Delta at Big Break but is not expected to impact human local water use, transfer, or export in or 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:	This is not applicable because 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).

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:	This is not applicable because this project is not expected to significantly affect flow in the Delta since it involves setting back channel banks and planting native riparian vegetation. Local hydrological impacts specific to Marsh Creek (not the greater Delta) might affect flow timing by accommodating high flows in wider floodplains of this relatively small tributary to the Delta. No significant effects on water flow in the Delta will occur through this project other than local improvements to water quality.

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 project is located within the Marsh Creek Watershed in eastern Contra Costa County approximately 40 miles northeast of San Francisco, and includes the cities of Brentwood and Oakley, and unincorporated areas. Marsh Creek Watershed is an important link between the Delta and the Diablo Range. According to the Map provided in Appendix 4 linked above, the project area is within the Legal Delta and on land classified as 'City Sphere of Influence' and 'Uplands' (>15 feet) (see attachment Section3_DPChap4C_Elevation_Map). Thus, the project area is not in the lowest priority areas according to the Delta Conservation Strategy, which are those areas that are most subsided and expected to become deep water habitat with sea level rise of approximately 55 inches in the coming 50 to 100 yrs. Rather, the project area is in one of the highest priority areas for restoration, which includes floodplains that can be seasonally inundated. These areas are valued because they can support a diversity of habitats, and therefore wildlife, and important ecological processes, such as contributing organic material to the foodweb (Final ERP Conservation Strategy 2013, p. 40). The project will help forward Strategy 3.2 in the Delta Conservation Strategy: "Establish migratory corridors for fish, birds, and other animals along selected Delta river channels" as it will restore native riparian habitat and create wider floodplains along Lower Marsh Creek, and as such is expected to extend and improve the quality of critical migratory

corridors for fish, birds and other wildlife, helping rebuild an important link between the open natural lands of Mount Diablo's west slope and Big Break in the Delta. The goal of the project is to restore aquatic habitats including seasonally inundated floodplain and seasonal wetlands, and terrestrial habitats including riparian areas and perennial grasslands, all of which are appropriate for upland area elevations and will create a mosaic of different upland habitat types. The project will help meet all Stage 2 Actions for Upland Areas including acquiring land and easement interests from willing sellers, and working with willing landowners, to restore seasonal floodplain areas to accommodate future sea level rise (Action 1), and restoring large- scale riparian vegetation along waterways (Action 5). Lower Marsh Creek was historically a floodplain with a braided meandering channel - basically creating a large sediment deposition zone in the alluvial valley. Flood control actions and channel hardening have modified these sections into transport and erosion (bank and bed) zones - a major change to process domain. The project will restore a small bit of this historic function by creating inset floodplain at the proper relative elevations for frequent flooding (0.5 to 2 yr return intervals) and creating low sloping banks to allow for stage resilient restoration - again this is all about re-creating proper relative elevations for habitats to form and be sustained. The Biological Resources section of the attached IS/MND (Final_IS/MND) uses best available science to describe existing conditions within the project area: "existing conditions within the project area primarily consists of anthropomorphic habitats, ruderal, nonnative annual grassland and freshwater marsh habitats. There is little to no woody riparian vegetation along the stream corridors and wetland vegetation in some areas is limited to a narrow 1-3-foot wide fringe along the low flow channel. Though the project area is generally degraded it does provide habitat for several common and special- status species including, but not limited to, western pond turtle, occasional adult Chinook salmon, western burrowing owl and periodic foraging California river otters" and provides a brief description of habitat types within the project area. The elevation of the Project site ranges from approximately 57-80 feet above sea level. Figure 3 - Typical Creek Cross-sections Showing 50' and 75' HCP/NCCP Stream Setbacks from Top of Bank, Existing Conditions (Top) and Example of Widened Channel with Riparian Vegetation (Bottom) is on page 6 of the attached IS/MND (Final_ISMND) and shows the restoration of seasonally inundated floodplain and the elevation of a typical widened channel. Final_ISMND.pdf. Section3_DPChap4C_Elevation_Map.pdf

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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: This section is not applicable because the project is not within any of the Priority Habitat Restoration Areas depicted in Appendix 5. Priority Habitat Restoration Areas are large areas within which specific sites may be identified for habitat restoration abased on assessments of land use and other issues addressed through further feasiblity analysis.

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:	This is not applicable because the project does not include levees or any levee projects.

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 Project will implement BMPs during construction. The AMMP includes methods for monitoring sites for invasive species with trigger thresholds for action remove invasive species (see Table 3 of the AMMP). The Project restoration component was designed to include native species conducive to the Project area. The Project area will be monitored and maintained for six years or until success criteria has been met as provided in the AMMP. AMMP.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:	This is not applicable because the project 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:	The Project has been developed in collaboration with the Contra Costa County Flood Control District, owner of the creek within the Project area, and the City of Brentwood. In addition, letters of support were received (attached) and public and agency comments were considered during the CEQA process. DP_P2_LOS_Assemblymember Jim Frazier.pdf, DP_P2_LOS_CCC District III Supervisor Diane Burgis.pdf, DP_P2_LOS_CCC Flood Control District.pdf, DP_P2_LOS_CCRCD.pdf, DP_P2_LOS_City of Brentwood.pdf, DP_P2_LOS_City of Oakley.pdf, DP_P2_LOS_Earth Team.pdf, DP_P2_LOS_EBRPD.pdf, DP_P2_LOS_ECC Habitat Conservancy.pdf, DP_P2_LOS_FOMCW.pdf, DP_P2_LOS_Senator Steven M. Glazer.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:	This is not applicable because this project does not involve discretionary State investments for levees for levee failure. It also does not involve developing emergency response and recovery to flooding other than providing flood accommodation along a regulated floodway. Nothing in this project will negatively effect State investments in Delta levees and Delta Risk Reduction. This project should reduce flooding in the Brentwood area.

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:	This is not applicable because the project does not involve new residential, commercial, or industrial 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:	This is not applicable because this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream. Marsh Creek is a designated floodway zone on the FEMA portal (http://msc.fema.gov/portal/home) and on page ##, the IS/MND states "FEMA online floodmaps reviewed in XXXX #### illustrate that the project area is within a Regulatory Floodway designated as Zone AE, an area subject to inundation with a 1.0 percent annual-chance of flood (FEMA ###)." This project will not negatively affect floodways as the project would reduce flooding to the surrounding area and increase cross sectional area of existing floodways.

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:	This is not applicable because the project does not encroach onto any of the floodplain areas: (1) the Yolo Bypass within the Delta, (2) the Consumnes 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 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 upstram 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 Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011.