

Certification of Consistency

C20219

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency

Government Agency: Central Valley Flood Protection Board

Primary Contact: Kalia N Schuster

Address: 3310 El Camino Avenue, Suite 200

City, State, Zip: Sacramento, CA 95821

Telephone/Fax: (916) 574-1429

E-mail Address: kalia.schuster@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

Will Approve / Will Fund

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project

Title: American River Watershed Common Features, Sacramento River East Levee Contract 3 Project

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

Proponent Name: U.S. Army Corps of Engineers

Address: 1325 J street

City, State, Zip: Sacramento, CA 95814

C. OPEN MEETING LAWS

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

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

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

Please attach any supporting evidence of the public review and comment period by clicking the upload button. Such evidence could include but is not limited to: a meeting agenda and attachment demonstrating that this certification was made publicly available, a screenshot with date and link to a website where the materials were posted, or other similar documentation.

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

[October-2021-Board-Meeting-Agenda.pdf](#), [September-2021-Board-Meeting-Agenda.pdf](#)

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

Construct levee improvements to meet embankment and foundation stability requirements. Most of the levee improvements included in the Proposed Action were analyzed in the American River Watershed Common Features General Reevaluation Report (ARCF GRR) Environmental Impact Statement/Environmental Impact Report (EIS/EIR). Analysis was supplemented and updated in the Supplemental Environmental Impact Report /Environmental Assessment (SEIR/EA) for the Sacramento River East Levee Contract 3 Project and the Supplemental EA/Initial Study (EA/IS) for the Beach/Stone Lakes Mitigation Site. See "Covered Action Summary" in attached Consistency Certification Narrative for a detailed covered action summary. Please note that the Sacramento River East Levee Contract 3 SEIR/EA Appendices, ARCF GRR Final EIS/EIR, the American River Watershed Common Features Chief's Report, and the Beach/Stone Lakes Supplemental EA/IS are available at www.sacleveeupgrades.com

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2005072046

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 12/01/2021

ANTICIPATED END DATE: (If available) 01/31/2023

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$25,000,000

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:

[A Consistency Certification Narrative_C3_2021-10-22.pdf](#), [B Mitigation Measure Comparison_C3_2021-10-22.pdf](#), [D SREL Alt Memo - 102915.pdf](#), [SREL C3 Final SEIR-SEA Report.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

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

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

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

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear

identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

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

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)**, the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

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

N/A

Answer Justification:

See attached consistency certification narrative. [A Consistency Certification Narrative_C3_2021-10-22.pdf](#)

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:

Delta Plan Mitigation Measures and the Project-specific Environmental Commitments and/or Mitigation Measures for the Proposed Action demonstrate compliance with, or effective substitution for, the Delta Plan Mitigation Measures. See attached Mitigation Measure Comparison. [B Mitigation Measure Comparison_C3_2021-10-22.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:

The U.S. Army Corps of Engineers (USACE) is implementing the proposed project, and the project was designed in accordance with USACE levee engineering standards, which constitute best

practices. See attached Consistency Certification Narrative.

[A_Consistency Certification Narrative_C3_2021-10-22.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?

N/A

Answer Justification:

The proposed project does not include ecosystem restoration or water 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 proposed project does not export water from, transfer water through, or use water 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 proposed project does not involve water supply or water transfer contracts from the State Water Project or 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?

N/A

Answer Justification:

The project site is not within a Habitat Conservation Plan and/or Natural Communities Conservation Plan area.

[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 proposed project 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 proposed project does not include ecosystem restoration.

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

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

N/A

Answer Justification: This policy covers all proposed projects in the priority habitat restoration areas depicted in Figure 4-6 of the Delta Plan. It does not cover actions outside those areas. The project site is not in 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?

Yes

Answer Justification: The levee improvements that are a part of the proposed project are directly adjacent to residential areas and the use of setback levees would be infeasible. Please refer to the attached Consistency Certification narrative. [A_Consistency_Certification_Narrative_C3_2021-10-22.pdf](#)

[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 proposed project does not include work performed within the waters of the Sacramento River. However, pipe replacement work at Sump 70 would affect dry areas below the ordinary high water mark (OHWM). The SEIR/EA analysis concluded that there would be no temporal or spatial loss of aquatic habitat (p. 50). Ground disturbance associated with levee improvements would disturb existing nonnative grassland habitat. Disturbed areas would be re-seeded with native species. Please refer to the attached Consistency Certification Narrative and Mitigation Measure Comparison. [A_Consistency_Certification_Narrative_C3_2021-10-22.pdf](#), [B_Mitigation_Measure_Comparison_C3_2021-10-22.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 proposed 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:

See attached Consistency Certification Narrative. [A_Consistency Certification Narrative_C3_2021-10-22.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?

Yes

Answer Justification:

The proposed project is located in a “very high priority” area for levee improvements. See attached Consistency Certification Narrative. [A_Consistency Certification Narrative_C3_2021-10-22.pdf](#)

[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 proposed project does not include residential development.

[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 proposed project would not encroach on floodways.

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

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

Yes

Answer Justification:

The proposed project would not encroach in floodplain areas.

10/28/2021