

Certification of Consistency

C20171

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **Local Agency**
Government Agency: Department of Water Resources
Primary Contact: Ling Chu
Address: 3500 Industrial Blvd, Suite 131
City, State, Zip: West Sacramento, CA 95691
Telephone/Fax: 916-376-9826
E-mail Address: ling-ru.chu@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

Will Approve / Will Carry Out / Will Fund

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**

Title: Decker Island Restoration Project

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

Proponent Name: Ling Chu
Address: 3500 Industrial Blvd, Suite 131
City, State, Zip: West Sacramento, CA 95691

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.](#)])? No
(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.)

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.

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

Project Summary: The Decker Island Restoration Project is a tidal restoration project proposed by DWR and located in Solano County along the Sacramento River. The Project site is currently an established emergent wetland with muted tidal connectivity to Horseshoe Bend to the south that transitions to upland habitat in the north. The Project would enhance up to 140 acres of tidal wetland, associated high marsh, and riparian habitats, benefiting special status species like Delta Smelt (*Hypomesus transpacificus*), Chinook Salmon (*Oncorhynchus thaleichthys*), and Swainson's Hawk (*Buteo swainsoni*). The Project consists of three main elements: lowering a section of levee, reconfiguring internal berms, and excavating a southern breach. Lowering a 300 foot section of levee at the northern end of the Island to internal elevation would create a flow through system that would increase access for fish and inhibit the establishment of invasive vegetation. Reconfiguring the internal berms would assist in moving water on and off site and would provide upland habitat for wildlife within the existing tidal wetland. Widening the existing breach at the southern end of the Island would provide full tidal access to the site and raise internal water levels from 5.8 feet NAVD88 to 6.3 feet NAVD88. Restoration would be accomplished with minimal in-water work and would utilize biological surveys, work windows, biological monitors, erosion control methods, and construction best management practices to avoid and minimize impacts to physical and biological resources. The Project would result in the enhancement of 90 acres of tidal wetland, restoration of 22 acres of tidal wetland, an increase to fish access, and an increase to aquatic food web export.

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2016082013

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 08/01/2018

ANTICIPATED END DATE: (If available) 11/01/2018

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: 1067334

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

[Final Decker MND.pdf](#), [CEQA App B - Engineering Drawings.pdf](#), [CEQA App C - Decker Island Air Quality Calculations.docx](#), [CEQA App D - Biological Resource Inventory .pdf](#), [CEQA App E - Cultural Resources Report.pdf](#), [CEQA App F - Hydrodynamic Modeling.pdf](#), [CEQA App G - GHG Calculations and Certification.pdf](#), [CEQA App H - Mineral Remoteness Evaluation.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

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

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or 12 Revised: July 2019 more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

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

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

Specific requirements of this regulatory policy:

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

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

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

Answer Justification:

b. [G P1\(b\)\(2\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\)](#) - Mitigation Measures

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute [mitigation measures](#) that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

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

Yes

Answer Justification: [GP1 Mitigation Equivalence.docx](#), [GP1 Decker Island MMRP.docx](#)

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:

[GP1 Detailed Analysis.docx](#), [GP1 Decker Island Flood Modeling.pdf](#),
[GP1 Decker Island Revegetation Strategy.docx](#)

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:

[Decker AMMP 25Oct2017_final_draft_FAST.docx](#)

DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

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

N/A

Answer Justification:

The covered action does not involve water that is exported from, transferred through, or used in the Delta.

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#) - Transparency in Water Contracting

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

N/A

Answer Justification:

The covered action does not involve entering into or amending water supply or water transfer contracts subject to DWR Guideline 03-09 and/or 03-10 (each dated July 3, 2003), (Appendix 2A).

DELTA PLAN CHAPTER 4

[Cal. Code Regs., tit. 23, § 5002, subd. \(c\)](#) - Conservation Measure

Cal. Code Regs., tit. 23, § 5002, subd. (c) provides that a conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was: (1) Developed by a local government in the Delta; and (2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013 is deemed to be consistent with the regulatory policies listed under Delta Plan Chapter 4 of this Form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the

conservation measure from the California Department of Fish and Wildlife.

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

Answer Justification:

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#) - Delta Flow Objectives

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

N/A

Answer Justification: The covered action does not significantly affect flow in the Delta.

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#) - Restore Habitats at Appropriate Elevations

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

Yes

Answer Justification: [ERP2 Restore Habitats at Appropriate Elevations.docx](#)

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

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

N/A

Answer Justification: The covered action is outside of the priority habitat restoration areas depicted in Appendix 5.

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#) - Expand Floodplains and Riparian Habitats in Levee Projects

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

N/A

Answer Justification: The covered action does not construct new levees or substantially rehabilitate or reconstruct existing levees.

[ER P5 / Cal. Code Regs., tit. 23, § 5009](#) - Avoid Introductions of and Habitat for Invasive Nonnative Species

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

Yes

Answer Justification: [ERP5 Habitat Conditions.docx](#)

DELTA PLAN CHAPTER 5

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - Locate New Urban Development Wisely

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

N/A

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

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#) - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

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

Yes

Answer Justification: [DPP2 Habitat Local Communication.docx](#)

DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - Prioritization of State Investments in Delta Levees and Risk Reduction

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

N/A

Answer Justification:

The covered action does not involve discretionary State investments in Delta flood risk management including levee operations, maintenance, and improvements.

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#) - **Require Flood Protection for Residential Development in Rural Areas**

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

N/A

Answer Justification:

The covered action does not involve new residential development of five or more parcels.

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

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

N/A

Answer Justification:

The covered action would encroach in a floodway that is a designated floodway or regulated stream. (see 23 CFR 5001(m) and 5001(aa)).

[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.

11/06/2017