

# Certification of Consistency

C20213

## Step 1 - Agency Profile

### A. GOVERNMENT AGENCY: Local Agency

Government Agency: California Department of Water Resources

Primary Contact: Caitlin Roddy

Address: 3500 Industrial Blvd

City, State, Zip: West Sacramento, CA 95691

Telephone/Fax: (916) 376-9797

E-mail Address: frpa@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: Bradmoor Island And Arnold Slough Tidal Habitat Restoration Project

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

Proponent Name: California Department of Water Resources

Address: 3500 Industrial Blvd

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.](#)])? (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 Yes

**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.

[GP1\\_Mitigation\\_Consistency.pdf](#), [B\\_IVMP\\_Final\\_2020.11.30\\_ADA.pdf](#), [DPP2\\_Local\\_Land\\_use.pdf](#), [ERP2\\_Restoration\\_Elevations.pdf](#), [ERP3\\_Protect\\_Restoration\\_Opportunities.pdf](#), [ERP5\\_Invasive\\_Species.pdf](#), [FINAL\\_Bradmoor\\_Arnold\\_CEQA\\_20201118.pdf](#), [A\\_EC\\_FINAL\\_2020.02.04\\_ADA\\_compliant.pdf](#), [ADA\\_C\\_TidalModeling\\_2018\\_compliant.pdf](#), [ADA\\_D\\_AQ\\_GHG\\_2020.12.07.pdf](#), [2-Bradmoor-Arnold\\_FINAL\\_PD\\_2021.01.05.pdf](#), [3.MM\\_BAS\\_AM\\_2021.pdf](#), [AMMP\\_BradArnold\\_January2021.pdf](#)

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

Supporting documents: 2-Bradmoor-Arnold\_FINAL\_PD\_2020.03.10; FINAL\_Bradmoor\_Arnold\_CEQA\_20201118 DWR is planning tidal restoration on Bradmoor Island (Bradmoor) and at Arnold Slough (Arnold). At project completion, the restoration sites would provide 855.09 acres of tidal waters and salt marsh habitat. This tidal restoration is intended to meet the obligations to improve habitat conditions for special-status fish species, set forth by: -- Reasonable and Prudent Alternative 4 in USFWS Biological Opinion (BiOp) No. 81420-2008-F-1481-5 (USFWS 2008), --Action 1.6.1 in the NMFS BiOp for the long-term Central Valley Project and State Water Project Operations Criteria and Plan (NMFS 2009), and -- Condition 7.1 in Longfin Smelt Incidental Take Permit No. 2081-2009-001-03 for State Water Project operations (CDFW 2009). --Obligations are continued into the 2019 USFWS Biological Opinion (service file No. 08FBTD00- 2019-F-0164), 2018 NMFS Biological Opinion on Long-Term Operations for the Central Valley project and the State Water Project (Consultation tracking No. WCRO-2016-00069), as well as the 2020 CDFW ITP for the Long-Term Operation of the State Water Project in the Sacramento- San Joaquin Delta (Permit number 2081-2019-066-00). DWR also is proposing to conduct adaptive management actions at the Blacklock restoration site. Together, the proposed actions on Bradmoor, at Arnold, and at the Blacklock restoration site are referred to as the Proposed Project. DWR initiated the Blacklock restoration project (Blacklock), restoring tidal inundation to an approximately 70-acre managed wetland site, to meet one of the requirements of the Suisun Marsh Preservation Agreement. The agreement was signed in 1987 (Reclamation et al. 1987), and subsequently was revised in 2005 and 2015 by DWR, Reclamation), DFG (now CDFW), and SRCD. The agreement includes mitigation requirements for restoration of tidal wetlands, and acquisition, management, and maintenance of conservation lands to meet habitat goals for the salt marsh harvest mouse (*Reithrodontomys raviventris halicoetes*). Restoration of the Blacklock site was completed in 2007, and the 10 years of required monitoring were completed in 2017. The proposed project contains a single action at Blacklock involving the removal of a remnant water control structure. The remnant water control structure on Blacklock would be excavated and left open as a breach prior to grading down and beaching levees at Arnold. This action is necessary to eliminate a potential navigation hazard following construction at Arnold. The SMP was finalized in 2011 by the Suisun Marsh Principal Agencies, a group of agencies with primary responsibility for Suisun Marsh management. The Suisun Marsh Principal Agencies are USFWS, Reclamation, DWR, CDFW, NMFS, SRCD, and the Delta Stewardship Council. The SMP is intended to guide near-term and future actions related to restoring tidal wetlands and managed wetland activities. USFWS and Reclamation served as joint lead agencies under the National Environmental Policy Act and signed a Record of Decision for the SMP in April 2014. CDFW served as lead agency under CEQA. A final EIS/EIR was completed for the SMP, and the EIR was certified on December 22, 2011 (State Clearinghouse No. 2003112039). DWR served as a responsible agency under CEQA for the SMP EIS/EIR. Thus, DWR will rely on the SMP EIS/EIR when acting on the aspects of the SMP (i.e., the original project under CEQA) that require DWR's approval, which include tidal restoration. DWR proposes to prepare an addendum to the SMP EIS/EIR to comply with CEQA and Section 15164 of the State CEQA Guidelines, covering the Proposed Project and the environmental effects of the tidal restoration activities that were evaluated in the SMP EIS/EIR. [FINAL\\_Bradmoor\\_Arnold\\_CEQA\\_20201118.pdf](#), [2-Bradmoor-Arnold\\_FINAL\\_PD\\_2021.01.05.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) 03/01/2022

ANTICIPATED END DATE: (If available) 12/31/2023

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$21,800,000

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM: not applicable

J. Supporting Documents:

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: The proposed project is consistent with all relevant regulatory policies in

the Delta Plan, as described in this consistency determination and in the FINAL\_Bradmoor\_Arnold CEQA\_2020118 (attached).

[FINAL\\_Bradmoor\\_Arnold CEQA\\_2020118.pdf](#)

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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:

Attached are the proposed Delta Plan Mitigation Measures and the Project-specific Environmental Commitments and/or Mitigation measures. The table demonstrates compliance with, or effective substitution for, the Delta Plan Mitigation Measures. Included below are sections of the Bradmoor Island and Arnold Slough Tidal Restoration Project where there is potential for significant impacts and mitigation measures are proposed. The Project is consistent with the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. [GP1\\_Mitigation\\_Consistency.pdf](#), [B\\_IVMP\\_Final\\_2020.11.30\\_ADA.pdf](#), [A\\_EC\\_FINAL\\_2020.02.04\\_ADA\\_compliant.pdf](#), [3.MM\\_BAS\\_AM\\_2021.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)(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:

Attached are detailed findings demonstrating the 3.MM\_BAS\_AM\_2020 (attached) [3.MM\\_BAS\\_AM\\_2021.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

Adaptive management is a structured approach to environmental management and decision-making in the face of uncertainty. It involves taking risks, assuming that plans may not always turn out as intended, having a backup plan, and continuing to evaluate progress toward goals. It provides a pathway for undertaking actions when knowledge about a system is incomplete and then modifying the approach as knowledge is gained and uncertainty is reduced. Adaptive management makes learning more efficient and improves management practices. Adaptive management fosters flexibility in management actions through an explicit process. It entails having clearly stated goals, identifying alternative management practices or objectives, framing hypotheses about ecological causes and effects, systematically monitoring outcomes, learning from the outcomes, sharing information with key players and decision-makers, and being flexible enough to adjust management practices and decisions (see Delta Independent Science Board 2016). Conceptual models often are used in adaptive management programs to integrate available knowledge and to provide synthesis and a means of developing and exploring promising management actions before they are attempted as field experiments or pilot projects. Adaptive management may reduce uncertainty when management actions are thought of as experiments. By using a structured design that includes appropriate controls (or references), monitoring, and replication, observed outcomes can be disentangled from a welter of potentially confounding factors (Zedler 2005). As a result, one can have a good idea of why a management action did or did not work as expected. The Delta Reform Act requires that adaptive management be used in science-based management of the Delta and its resources. [3.MM\\_BAS\\_AM\\_2021.pdf](#), [AMMP\\_BradArnold\\_January2021.pdf](#)

Answer Justification:

### 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 contracting for water supply or water transfer with 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?**

N/A

Answer Justification: The proposed project does not include a natural community conservation plan or a habitat conservation plan.

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

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

No

Answer Justification: The proposed project will not require revision of flow objectives.

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[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 Proposed Project is consistent with Delta Plan Policy Number ER P2. Suisun Marsh is one of six priority habitat restoration areas designated by the Delta Plan (Delta Stewardship Council 2013). The Proposed Project would not conflict with the land elevations identified for “intertidal” and “subtidal” in the elevation map of Appendix 4 of the Draft Conservation Strategy for Restoration of the Sacramento–San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (Delta Stewardship Council 2013) because the elevation of the project site is considered to be intertidal and subtidal.

[ERP2\\_Restoration\\_Elevations.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?**

Yes

Answer Justification: The Proposed Project is consistent with Delta Plan Policy Number ER P3. As discussed under ER P2, Suisun Marsh is one of six priority habitat restoration areas designated by the Delta Plan (Delta Stewardship Council 2013). The conversion of managed wetlands to tidal wetlands under the Proposed Project would be consistent with restoring habitat and would support Policy ER P3 in protecting opportunities to restore habitat.

[ERP3\\_Protect\\_Restoration\\_Opportunities.pdf](#)

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[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 proposed project does not involve the construction of levees in the Delta.

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[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 is consistent with Delta Plan Policy Number ER P5. Multiple environmental commitments would be implemented to minimize the potential for introduction of new noxious weeds and spread of weeds previously documented in the project area: --Use certified, weed-free, imported erosion control materials (or rice straw in upland areas). --Coordinate with the Solano County agricultural commissioner and land management agencies to ensure that the appropriate BMPs are implemented. --Educate construction supervisors and managers on weed identification and the importance of controlling and preventing the spread of noxious weeds. --Clean all equipment at designated wash stations after leaving noxious-weed infestation areas. --Treat isolated infestations of noxious weeds identified in the project area with approved eradication methods at an appropriate time to prevent further formation of seed and destroy viable plant parts and seed. --Minimize surface disturbance to the greatest extent possible. --Use certified weed-free native mixes for any restoration planting or seeding as may be necessary, as provided in the revegetation plan developed in cooperation with CDFW. Mulch with certified weed-free mulch. Rice straw may be used to mulch upland areas. -- Use native, noninvasive species or nonpersistent hybrids in erosion control plantings to stabilize site conditions and prevent invasive species from colonizing. In addition, the Proposed Project would include an adaptive management and monitoring plan that would incorporate practicable and feasible monitoring and approaches to control nonnative invasive species. Furthermore, the restoration would help promote native species suited to a tidal wetland habitat [ERP5\\_Invasive\\_Species.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 limiting residential, commercial, and 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 Proposed Project is consistent with Delta Plan Policy Number DP P2. The Proposed Project would not include the siting of water or flood facilities. The conversion of managed wetlands to tidal wetlands would not be considered an incompatible use with the existing land use designations of the project area or adjacent areas (designated by Solano County primarily as "marsh" and "agriculture" [Solano County 2008:Chapter 2]). Although grazing on Bradmoor would be discontinued, grazing infrastructure at Arnold would allow grazing to continue as part of long-term management. The overall current use of Suisun Marsh in general for recreational activities (e.g., hunting, boat fishing, wildlife viewing, walking) would not change. [DPP2\\_Local\\_Land\\_use.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:

The proposed project does not include discretionary state investments in Delta flood risk management.

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[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 the development of new residential areas.

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[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 proposed project does not involve encroachment or construction in a floodway.

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[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 proposed project does not include encroachment or construction in the specified floodways: Yolo Bypass within the Delta, the Consumnes River- Mokelumne River Confluence, or the Lower San Joaquin River Floodplain Bypass area.

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**02/01/2021**