

Certification of Consistency

C20231

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **Local Agency**
Government Agency: Department of Water Resources
Primary Contact: Anitra Pawley
Address: 901 P Street Suite 411A
City, State, Zip: Sacramento, CA 95814
Telephone/Fax: (530) 758-4555
E-mail Address: anitra.pawley@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: McCormack-Williamson Tract Levee Modification And Habitat Restoration Project – Phase B

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

Proponent Name: Reclamation District 2110: McCormack Williamson
Address: Post Office Box 2382
City, State, Zip: Stockton, CA 95201

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.](#)]) **Yes**
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)

In 2018, the California Department of Water Resources (DWR) submitted Certification of Consistency C20186 , which included DWR’s determination that the Phase B McCormack-Williamson Tract (MWT) Levee Modification and Habitat Restoration Project (project or proposed project) is consistent with the Delta Plan. That Certification was not appealed, and the DWR determinations which are included in that Certification are final. (See Cal. Water Code § 85225.15.) In February 2022, DWR issued a Supplemental EIR which focused on certain changes to Phase B of the MWT project. The MWT project remains located at MWT and the proposed objectives and project concept remains the same – to degrade existing levees surrounding MWT at three locations, allowing regular freshwater and tidal inundation of MWT that results in restoration of habitat within the MWT interior and significant flood protection downstream during large flood events. Phase B changes are related to the design of flood protection and habitat restoration components and include decommissioning and relocating utilities on MWT. This Certification of Consistency is limited to those Phase B changes. Specifically, DWR certifies that it has determined that the following Phase B changes are consistent with the Delta Plan: a) updated design of the MWT East Levee degrade; b) updated design of the Mokelumne River Levee degrade; c) updated design of the MWT Southwest Levee degrade; d) added a small repair along the MWT West Levee; e) added new areas to enhance the landside levee slope and associated habitat; f) modified design of MWT interior landform grading to support high-quality habitat, including excavating a tidal channel network, excavating borrow material from a large subtidal area, and using excavated material to construct marsh plains, riparian berms, and riparian floodplains; g) incorporated a small turnaround area at one location on the existing levee crest road for use during future maintenance activities; h) identified existing inactive gas wells and pipelines on the MWT interior that require removal or additional activities for safe (re) abandonment; and i) identified relocation of Sacramento Metropolitan Utility District distribution lines on the MWT interior, including removing existing power poles and conductor from the MWT interior and constructing new distribution line segments to maintain existing service at three offsite locations. With the design updates identified above, anticipated natural habitat establishment on MWT after construction of the MWT Phase B project is as follows: a) subtidal Open Water/Shallow Subtidal (approximately 400 to 600 acres) , b) tidal Marsh (approximately 600 to 900 acres), and c) riparian Scrub/Mixed Riparian Woodland/Valley Oak Woodland (approximately 190 to 280 acres). The MWT Phase B project Final Supplemental EIR which is provided as Attachment A. [MWT Final SEIR_combined.pdf](#)

E. STATUS IN THE CEQA PROCESS: Final Certified Document

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2003012112

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 03/01/2023

ANTICIPATED END DATE: (If available) 12/31/2026

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$32,200,000

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM: C20186

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?

Yes

Consistent. The MWT Phase B project is consistent with all regulatory policies of the Delta Plan, as described in more detail in the following sections. The MWT Phase B project also is consistent with the Delta Plan's coequal goals. The MWT project is consistent with the Delta Plan's first coequal goal to protect and enhance the Delta ecosystem. The MWT Phase B project will continue implementation of the Delta Plan by creating tidal, subtidal, and floodplain habitat at the Cosumnes River-Mokelumne River confluence, one of the six Priority Habitat Restoration Areas identified in the Delta Plan's Chapter 4. The project's flood-control and habitat-restoration improvements will enhance physical and ecological processes and create subtidal, tidal and riparian habitats. The project will also incorporate landscape-scale restoration of Delta habitat. Water would

Answer Justification:

continue to be conveyed downstream through the Delta with the MWT Phase B project, but instead of being confined to the Mokelumne River, Lost Slough, and other channels, water would pass through the MWT interior to reduce downstream flood risk while restoring shallow subtidal, tidal marsh, and riparian habitats and benefits to species in the area that use these habitat types. The MWT Phase B project also is consistent with the second coequal goal to provide for a more reliable water supply for California. The MWT Phase B project is a flood risk reduction and ecosystem restoration project and would not impact water supplies, as discussed in Impact WSM-1 of the Supplemental EIR. [MWT Final SEIR_combined.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:

Consistent. For Certification of Consistency C20186, DWR demonstrated that mitigation measures in the North Delta EIR applicable to the MWT project were consistent with, and at least as effective as, relevant mitigation measures included in the Delta Plan. Many of these same measures were adapted/updated and used in the Supplemental EIR. Additionally, based on the updated analysis in the Supplemental EIR, some mitigation measures applicable to the MWT in the North Delta EIR were deemed no longer necessary or not applicable to the Phase B project, while some additional mitigation measures were added. Mitigation measures required for each significant MWT Phase B project impact in the Supplemental EIR are consistent with and at least as effective as, relevant mitigation measures included in the Mitigation, Monitoring, and Reporting Program (MMRP) for the Delta Plan (Delta Stewardship Council 2019). [MWT Delta Plan CD Att.B_MMRP Consistency_12 8 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:

Consistent. The MWT Phase B project design and adaptive management plan continue to be based on best available science. Refer to Certification of Consistency C20186 which

remains applicable. Certification of Consistency C20186 included an Adaptive Management Framework which has been updated and refined as planning and design for Phase B have progressed. The Adaptive Management Plan for Phase B includes some new components, as indicated by highlighted information in Attachment C. [MWT Draft Adaptive Mgmt Plan_20221216_ADA.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

Consistent. Certification of Consistency C20186 included an Adaptive Management Framework which has been updated and refined as planning and design for Phase B have progressed. The Adaptive Management Plan for the Phase B project includes some new components to reflect best available science, as indicated by highlighted information in Attachment C. Therefore, the updated Phase B project adaptive management plan remains consistent with this policy as discussed in Certification of Consistency C20186. [MWT Draft Adaptive Mgmt Plan_20221216_ADA.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:

Not Applicable. Refer to Certification of Consistency C20186 which remains 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:

Not Applicable. Refer to Certification of Consistency C20186 which remains 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: Not Applicable. The MWT Phase B project does not include implementing conservation measures pursuant to habitat conservation plans or natural community conservation plans.

[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: Not Applicable. DWR has determined that the Covered Action does not significantly impact the Delta Flow Objectives. To the extent that the Covered Action does impact the Delta Flow Objectives, DWR has determined that the Covered Action is consistent with those Objectives.

[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: Consistent. DWR and the Council agree that, because the MWT site elevation has experienced only minimal subsidence, the project site is highly suitable for tidal marsh restoration. Indeed, the project site falls within one of only six Priority Habitat Restoration Areas which the Council identified in its Council's June 2022 Update of the Delta Plan's Chapter 4. The restoration design was updated for the MWT Phase B project. Through a balanced cut and fill design, the MWT Phase B Project is expected to restore approximately 400 to 600 acres of subtidal open water/shallow subtidal, 600 to 900 acres of tidal marsh, and a 190 to 280 acres of supratidal habitats including riparian scrub, riparian forest, valley oak woodland, and seasonal wetlands. The MWT Phase B project would continue to create tidal and subtidal habitat, be consistent with Delta Plan Appendix 3, and includes properly designed habitat restoration actions based on the area's elevation as shown in Delta Plan Appendix 4. Therefore, the updated Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186.

[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: Consistent. The updated Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186.

The area proposed for restoration has not changed, is within the Cosumnes Mokelumne Confluence “Priority Habitat Restoration Area” which the Council identified in its 2022 update to the Delta Plan’s Chapter 4, and is designed to ensure that the restoration habitat opportunity is realized by restoring the habitat to appropriate riparian and tidal elevations to the maximum extent feasible. The restoration design has been updated for the MWT Phase B project, because detailed modelling revealed that without grading and placement of fill, areas on the landside of MWT were too deeply subsided to ensure tidal restoration. Through a balanced cut and fill design, the MWT Phase B Project is expected to restore approximately 400 to 600 acres of subtidal open water/shallow subtidal, 600 to 900 acres of tidal marsh, and a 190 to 280 acres of supratidal habitats including riparian scrub, riparian forest, valley oak woodland, and seasonal wetlands. The MWT Phase B project would also result in a temporal loss of valley/foothill riparian cover types removed during construction activities . Supplemental EIR Mitigation Measure VEG-1 requires achieving no net loss of riparian habitat functions or values including determining appropriate mitigation ratios and requirements for replacement of riparian cover, including plantings, in consultation with CDFW. [MWT Final SEIR_combined.pdf](#)

[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:

Not Applicable. Refer to Certification of Consistency C20186 which remains 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?

Yes

Answer Justification:

Consistent. The updated Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186. Certification of Consistency C20186 included an Adaptive Management Framework which has been updated and refined as planning and design for Phase B have progressed. The Adaptive Management Plan for Phase B includes some new components, as indicated by highlighted information in Attachment C. [MWT Draft Adaptive Mgmt Plan_20221216_ADA.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:

Not Applicable. Refer to Certification of Consistency C20186 which remains 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:

Consistent. The updated Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186. Ecosystem restoration and flood protection improvements would continue to be implemented on MWT with the MWT Phase B project.

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:

Consistent. The MWT Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186.

[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:

Not Applicable. Refer to Certification of Consistency C20186 which remains 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:

Consistent. Consistent. DWR has determined that: (i) this policy applies because MWT is a floodway that is not a designated floodway or a regulated stream, but (ii) the project will not unduly impede the free flow of water in the floodway or jeopardize public safety. The analysis of flood risk related to changes in water surface elevations was updated for the MWT Phase B project using a new hydraulic model and changes in design of flood protection components. Supplemental EIR Impact FC-1 provides a comprehensive discussion concluding that impacts related to flooding from the MWT Phase B project would be less than significant, and in fact the MWT Phase B project is designed to reduce regional flood risk. Based on both previous and updated analyses, the MWT Phase B project would not unduly impede the free flow of water in the floodway or jeopardize public safety. Therefore, the MWT Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186. [MWT Final SEIR_combined.pdf](#)

[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:

Consistent. The MWT Phase B project remains consistent with this policy as discussed in Certification of Consistency C20186. The Phase B MWT project would not result in significant impacts to floodplain values and functions as discussed in Section 3.1,

“Hydrology and Water Quality” and Section 3.6, “Biological Resources” in the Supplemental EIR. [MWT Final SEIR_combined.pdf](#)

02/13/2023