

Certification of Consistency

C20182

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **Local Agency**

Government Agency: California Department of Fish and Wildlife Bay-Delta Region

Primary Contact: Steven Rodriguez

Address: 7329 Silverado Trail

City, State, Zip: Napa, Ca 94558

Telephone/Fax: 707 944-5521

E-mail Address: steven.rodriguez@wildlife.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: **Will Approve**

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**

Title: YBWA Habitat And Drainage Improvements

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

Proponent Name: California Department of Fish and Wildlife Bay-Del

Address: 7329 Silverado Trail

City, State, Zip: Napa, Ca 94558

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.)

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.

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

The proposed project includes five major improvements, identified as Project Components, that are being proposed to enhance the California Department of Fish and Wildlife's (CDFW) ability to manage wetland resources and agricultural operations within the Yolo Bypass Wildlife Area (YBWA). Specific improvements include installing new water control structures, expanding canals, installing box culverts and two con-span bridges, replacing existing culverts, raising road grades, separating dual function ditches, relocating an existing water pump, and installing two new pumps.

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2017122001

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 03/31/2018

ANTICIPATED END DATE: (If available) 11/30/2020

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: 5000000

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

[YBWA Habitat and Drainage Improvement Best Science.pdf](#), [YBWA Habitat and Drainage Improvement Mitigation Measures.pdf](#), [DC Covered Actions Discussion-Spurr.pdf](#), [YBWA Habitat and Drainage Improvement Adaptive Management.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?

N/A

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: [YBWA Habitat and Drainage Improvement Mitigation Measures.pdf](#)

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: [YBWA Habitat and Drainage Improvement Best Science.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

Answer Justification: [YBWA Habitat and Drainage Improvement Adaptive Management.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?

Yes

Answer Justification:

The covered action does involve water that is used in the Delta. All water is sourced on site from agricultural tail water, natural and agricultural drainage above the Delta and existing tidal and non-tidal channels by riparian rights. No change in water sourcing will result from the project. The project will affect the residence time and scheduling of water management on wetland habitat and agricultural applications. Net influx and outflow volumes will not change. Outflow timing may change, fluctuating from present variability by an order of hours to a couple of days.

[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 section 226 of P.L. 97-293, as amended or section 3405(a)(2)(B) of the Central Valley Project Improvement Act, Title XXXIV of Public Law 102-575, as amended, (Appendix 2B), and Rules and Regulations promulgated by the Secretary of the Interior to implement these laws.

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?

Is a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available?

N/A

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?

Yes

Answer Justification:

The Yolo Bypass Wildlife Area falls within the Yolo Bypass, USACOE jurisdictional flood way and the NMFS Biological Opinion which includes Delta Flow objectives. The management of water by YBWA for its habitat and agricultural needs is dictated by and subordinate to these flow 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:

Minimal disturbance of habitat for channel enlargement and facility installation will be repaired by revegetation. Willow thickets will be created in new wetland areas and natural recruitment is also expected in these areas receiving improved water management. Most areas affected by the project are already managed wetlands that are dry during the warm months. Pondered areas will be enhanced by the improvement in water management. Land elevations, except in channels, will not be changed.

[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:

No land use changes are created by the project.

[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:

The area is periodically flooded per statutes creating the Yolo Bypass and operating the the flood weirs. Entry of invasive plants into the system is beyond the control of YBWA managers. Disturbance strategies, water management and herbicides are all used to maximize food and habitat for wildlife including native and non-native species.

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.;The covered action involves commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this regulation.;

[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:

No land use changes will result from the project. The area is already a flood facility containing habitat and water management infrastructure.

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?

Yes

Answer Justification:

Infrastructure installed in this project is typical of existing water management facilities such as pumps and ditches. Vegetation to be planted is typical of existing vegetation, and for the most part merely replaces vegetation disturbed by the installation process.

01/10/2018