

Certification of Consistency

C20207

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: Local Agency
Government Agency: California Department of Water Resources
Primary Contact: Kaylee Vanni
Address: 3500 Industrial Blvd
City, State, Zip: West Sacramento, CA 95691
Telephone/Fax: (916) 375-4269
E-mail Address: kaylee.vanni@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: Yolo Bypass Salmonid Habitat Restoration and Fish Passage 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 draft** Yes

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)

The Project will allow increased flow from the Sacramento River to enter the Yolo Bypass through a gated notch on the east side of Fremont Weir. The gated notch would create an opening in Fremont Weir that is deeper than Fremont Weir, with gates to control water going through the facility into the Yolo Bypass. The invert of the new notch would be at an elevation of 14 feet, which is approximately 18 feet below the existing Fremont Weir crest. From November to March 15, water would be able to passively flow through the notch during periods when Sacramento River elevations are greater than 14 feet. After March 15, Project flows will be limited to prevent additional inundation from the Project. The Project will allow flows of approximately 6,000 cfs, depending on Sacramento River elevation, through the gated notch to provide ecological benefits in the Yolo Bypass such as open channel flow for adult fish passage, access to floodplain rearing habitat, and additional floodplain inundation. All Project construction, physical facilities, and weir gate operation will be located in Yolo County approximately 13 miles north of the boundary of the legal Delta. However, flows from the gated notch will inundate lands within the Yolo Bypass, including lands within the legal Delta, in order to realize the ecological benefits. DWR will be acquiring flood easements over these lands. It is the nexus of DWR exercising flood easement property rights within the legal Delta in order to inundate lands in the Yolo Bypass that renders the Project a Covered Action. As such, the focus of this Certification of Consistency is Project activities related to the flood easements within the legal Delta. [01_Yolo_Bypass_Final_EIS_EIR_Cover_Exec_Summ_TOC.pdf](#), [0 Consistency Determination Detailed Analysis Document.docx](#)

E. STATUS IN THE CEQA PROCESS: Final Certified Document

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2013032004

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 04/15/2022

ANTICIPATED END DATE: (If available) 10/31/2022

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$45,377,000

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:

[YBSHRFPP NOD.pdf](#), [01_Yolo_Bypass_Final_EIS_EIR_Cover_Exec_Summ_TOC.pdf](#),
[02_Yolo_Bypass_Final_EIS_EIR_Chapters_1-8.pdf](#), [03_Yolo_Bypass_Final_EIS_EIR_Chapter_9.pdf](#),
[04_Yolo_Bypass_Final_EIS_EIR_Chapters_10-26.pdf](#), [05_Yolo_Bypass_Final_EIS_EIR_Appendices_A-C.pdf](#),
[06_Yolo_Bypass_Final_EIS_EIR_Appendix_D_Part1.pdf](#), [07_Yolo_Bypass_Final_EIS_EIR_Appendix_D_Part2.pdf](#),
[08_Yolo_Bypass_Final_EIS_EIR_Appendix_D_Part3.pdf](#), [09_Yolo_Bypass_Final_EIS_EIR_Appendix_D_Part4.pdf](#),
[10_Yolo_Bypass_Final_EIS_EIR_Appendices_E-H4.pdf](#), [11_Yolo_Bypass_Final_EIS_EIR_Appendices_H5-K2.pdf](#),

[12 Yolo Bypass Final EIS EIR Appendix L1 Part1.pdf](#), [13 Yolo Bypass Final EIS EIR Appendix L1 Part2.pdf](#), [14 Yolo Bypass Final EIS EIR Appendix L1 Part3.pdf](#), [15 Yolo Bypass Final EIS EIR Appendix L1 Part4.pdf](#), [16 Yolo Bypass Final EIS EIR Appendix L1 Part5.pdf](#), [17 Yolo Bypass Final EIS EIR Appendix L2-M.pdf](#), [18 Yolo Bypass Final EIS EIR Appendix N Part1.pdf](#), [19 Yolo Bypass Final EIS EIR Appendix N Part2.pdf](#), [20 Yolo Bypass Final EIS EIR Appendix N Part3.pdf](#), [21 Yolo Bypass Final EIS EIR Appendices O-W.pdf](#), [1 Policy ER P3 Protect Opportunities to Restore Habitat.docx](#), [2 Policy ER P5 Habitat Conditions.docx](#), [3 Policy DP P2 Habitat Local Communities.docx](#), [Appendix A Mitigation Measure Crosswalk Table.docx](#), [Appendix B Adaptive Management and Monitoring Plan.docx](#), [0 Consistency Determination Detailed Analysis Document.docx](#), [Appendix C Science Work Plan.DOCX](#)

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.

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:

The covered action is consistent with the Delta Plan's Appendix O Mitigation Monitoring and Report Program's 2018 update document. The covered action package includes a mitigation cross walk table that compares the Project's mitigation measures with the Delta Plan's MMRP. Each measure is consistent with, and as effective as, the relevant mitigation measures included within the Delta Plan's MMRP. See Appendix A Mitigation Measure Crosswalk Table and the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project Appendix P Mitigation Monitoring and Reporting Program for more information. [21_Yolo_Bypass_Final_EIS_EIR_Appendices_O-W.pdf](#), [Appendix A Mitigation Measure Crosswalk Table.docx](#), [0 Consistency Determination Detailed Analysis Document.docx](#)

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:

Project development, design, and adaptive management are based on best available science. Best available science used for the Project is relevant, inclusive, objective, transparent, timely, and peer-reviewed. The Project is consistent with the criteria for best available science as detailed in the Delta Plan's Appendix 1A Best Available Science. The Project demonstrates use of best available science by the following elements that have been incorporated into Project planning:

- Experienced technical team reviews of Project development;
- Application of extensive models for assessing impacts and designing the Project to meet objectives, including incorporating climate change in CalSimII modeling;
- Utilization of novel scientific research on fish passage, restoration projects (see Final EIS/EIR references list for each chapter);
- The best professional judgment of leading experts in the fields of engineering, science, and fisheries. See Consistency Determination Detailed Analysis Document for more information. [0 Consistency Determination Detailed Analysis Document.docx](#), [Appendix C Science Work Plan.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:

On March 14 and 22, 2019, DWR and Reclamation met with NMFS to discuss draft language for the adaptive management plan which was included in the Final EIS/EIR, as Appendix C. Since then, DWR and Reclamation have updated the plan to be consistent with the Delta Plan's Appendix 1B Adaptive Management Plan guidance. The goal of utilizing adaptive management for the Project is to promote long-term improvements, based on best available science. DWR and Reclamation will be responsible for implementing the adaptive management framework as it is described in Appendix B Adaptive Management and Monitoring Plan. The Adaptive Management and Monitoring Plan is intended to be a living document, with additions and edits made as more information is understood about Project outcomes. For more detailed information, see Appendix B: Adaptive Management and Monitoring Plan. [05_Yolo_Bypass_Final_EIS_EIR_Appendices_A-C.pdf](#), [Appendix B Adaptive Management and Monitoring Plan.docx](#), [0 Consistency Determination Detailed Analysis Document.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:

Not Applicable. The covered action does not involve exporting, transferring, or using 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:

Not Applicable. The covered action does not involve water supply or water transfer contracts from the State Water Project 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: Not Applicable. The covered action does not include a natural community conservation plan or a habitat conservation plan.

[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. The Project analyses showed no significant effect on flows entering the Delta. The Project CalSim II flow modeling incorporated facilities, land use, SWP and CVP water supply contracts, and existing D-1641 regulatory requirements. The Project does not significantly change flow dynamics within the Sacramento River or Yolo Bypass, and flows entrained by the Project re-enter the Delta at Rio Vista, resulting in no significant effect on flow in the Delta. As such, this policy is not applicable. However, the Project is still consistent with this policy, since the modeling included compliance with current State Water Resources Control Board Water Quality Control Plan flow objectives as required under D-1641. See Final EIS/EIR Chapter 4 “Hydrology, Hydraulics, and Flood Control and Chapter 5 “Surface Water Supply” for supporting analysis. [02_Yolo_Bypass_Final_EIS_EIR_Chapters_1-8.pdf](#)

[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: Not Applicable. The covered action is not within the areas covered by the elevation map in Appendix 4 of the Delta Plan.

[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 Delta Plan’s Ecosystem Restoration Policy 3 is applicable to the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Project) since the Project will utilize flowage easements within the legal Delta portion of the Yolo Bypass priority habitat restoration area, as depicted in Appendix 5 of the Delta Plan (Figure 1). The Project operations within the legal Delta are consistent with this policy, as the goal of the Project is to restore habitat and fish passage opportunities for adult and juvenile salmonids and sturgeon in the Yolo Bypass. The Project purpose statement details how the Project will aid in habitat restoration within the Yolo Bypass. See Policy ER P3 Protect Opportunities to Restore Habitat for more information. [1_Policy_ER_P3_Protect_Opportunities_to_Restore_Habitat.docx](#)

[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. The covered action does not include construction of new

levees or significant rehabilitation or reconstruction of 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 Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Project) is consistent with the Delta Plan's Ecosystem Restoration Policy 5 (ER P5). The Final EIS/EIR fully analyzed and avoided, when feasible, the potential for introduction of, or improved habitat for, nonnative invasive species during Project operations within the legal Delta. See Policy ER P5 Habitat Conditions for more information.

[02_Yolo_Bypass_Final_EIS_EIR_Chapters_1-8.pdf](#),

[03_Yolo_Bypass_Final_EIS_EIR_Chapter_9.pdf](#), [2_Policy_ER_P5_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:

Not Applicable. 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:

The Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Project) is consistent with Delta Plan Policy 2 because all efforts, when feasible, have been made to reduce or minimize conflicts with existing land use in the Yolo Bypass by involving local stakeholders in Project development, adequately assessing impacts to land use during the environmental review process, and purchasing flowage easements over affected properties. See Policy DP P2 Habitat Local Communities for more information. [02_Yolo_Bypass_Final_EIS_EIR_Chapters_1-8.pdf](#), [04_Yolo_Bypass_Final_EIS_EIR_Chapters_10-26.pdf](#), [11_Yolo_Bypass_Final_EIS_EIR_Appendices_H5-K2.pdf](#), [21_Yolo_Bypass_Final_EIS_EIR_Appendices_O-W.pdf](#), [3_Policy_DP_P2_Habitat_Local_Communities.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:

Not Applicable. The covered action does not involve discretionary State investments in Delta flood risk management.

[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. The covered action does not involve new residential

development.

[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:

Not Applicable. The covered action does not involve an encroachment in a floodway that is not either a designated floodway or regulated stream.

[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:

Not Applicable. The Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project's (Project) physical encroachment on the floodway is restricted entirely to the Northern Yolo Bypass approximately 13 miles north of the boundary of the legal Delta. All Project construction will occur outside of the legal Delta; therefore, this policy is not applicable to the Project. However, the Project is still consistent with Risk Reduction Policy 4, as the Project will not have a significant adverse impact on floodplain values and functions. Instead, the Project will protect, enhance, and restore floodplain rearing habitat for juvenile salmonids in the Yolo Bypass.

12/10/2020