Certification of Consistency

C20263

Step 1 - Agency Profile

A. GOVERNMENT AGENCY:	**Local Agency**
Government Agency:	Reclamation District No. 38
Primary Contact:	Martin Berber
Address:	2379 Gateway Oaks Drive, Suite 100
City, State, Zip:	Sacramento, CA 95833
Telephone/Fax:	(916) 441-6850
E-mail Address:	ssoliva@wbecorp.com

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: **Will Carry Out**

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**

Title: Mokelumne River Confluence Multi-Benefit Project

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

Proponent Name:	Reclamation District No. 38
Address:	P.O. 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.])? (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.)	Yes

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.

Agenda.pdf, RD 38 - August 2026 Engineer's Report.pdf

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

The purpose of the Mokelumne River Confluence Multi-Benefit Project is to rehabilitate the levee section from Station 822+00 – 1038+00 to the Delta Specific PL 84-99 Standard and create waterside habitat. Landside work includes raising the levee crown to achieve sufficient freeboard above the 100-year flood elevation and stabilizing the landside slope through the construction of a toe berm. Additionally, a setback levee will be constructed from Station 857+00 – 864+00. Waterside work includes excavation of the existing levee at the setback levee, to construct a habitat bench above Mean Lower Low Water. The habitat bench and setback levee waterside slope will be planted with native riparian species, creating approximately 1 acre of Delta Levee Waterside Habitat. Plantings will be monitored and maintained to ensure success criteria are met.

E. STATUS IN THE CEQA PROCESS:	NOD has been filed
F. STATE CLEARINGHOUSE NUMBER:(if applicable)	2026060465
G. COVERED ACTION ESTIMATED TIME LINE:	
ANTICIPATED START DATE: (If available)	08/01/2026
ANTICIPATED END DATE: (If available)	12/31/2029
H. COVERED ACTION TOTAL ESTIMATED PROJECT COST:	$23,000,000

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:

NOD - filed.pdf, Resolution Adopting ISMND - signed.pdf, Final MMRP.pdf, Final ISMND - signed.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 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

Answer Justification:	The Project is consistent with the two coequal goals of the Delta Plan of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Staten Island supports a farming operation that is also seasonally flooded to provide habitat for migrating populations of cranes, shorebirds, waterfowl, and birds of prey along the Pacific Flyway. Rehabilitation of the South and North Mokelumne River levee to the Delta Specific PL 84-99 Standard will not only protect and enhance the habitat on Staten Island, it will also decrease the likelihood of a levee failure and impacts to California's water supply. The Staten Island levee system protects the Mokelumne River which conveys water diverted from the Sacramento River via the Delta Cross Channel. Water diverted via the Delta Cross Channel flows into the San Joaquin River towards the C.W. Bill Jones Pumping Plant, which is the intake for the Delta-Mendota Canal, part of the Central Valley Project.

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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:	The Project is consistent with all applicable and feasible mitigation measures adopted and incorporated into the Delta Plan. Mitigation measures were included and adopted in the Final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Plan. Final MMRP.pdf, Final ISMND - signed.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:

The Project incorporates the use of the best available science with respect to levee design, environmental protection, and habitat restoration. The levee improvements were designed to meet or exceed the Delta-Specific PL 84-99 Standard for levee geometry and stability. A geotechnical investigation prepared by Shannon and Wilson evaluated subsurface conditions, developed design parameters, and analyzed levee stability to support the Project design. Biological surveys, habitat assessments, wetland delineations, and other environmental investigations were conducted to identify and avoid or minimize potential impacts to sensitive biological resources and waters of the United States and State. These studies informed the Project design, environmental analysis, and mitigation measures adopted in the Final Initial Study/Mitigated Negative Declaration. The Project's Restoration Plan will utilize plant species native to the Project vicinity and region and establish a diverse native plant community consisting of woody and herbaceous species. Accordingly, the Project was developed using the best available science consistent with Appendix 1A of the Delta Plan and satisfies G P1(b)(3). Final ISMND - signed.pdf, Geotechnical Report.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

Answer Justification:

Prior to the construction of habitat enhancement, a detailed restoration plan will be prepared and submitted to CDFWS for review. The restoration plan will describe responsible parties, the species palette, planting locations, planting densities, the schedule for implementation, restoration success criteria, monitoring methods, reporting requirements and corrective actions be taken if the proposed success criteria are not being met. The restoration plan will be prepared as an adaptive management and monitoring program consistent with the framework established in the Delta Plan Appendix

1B. Final MMRP.pdf, Final ISMND - signed.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?

N/A

Answer Justification: The Project is not a water export/transfer project.

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 Project does not involve water contracting from the SWP or CVP.

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 Project is located in San Joaquin County in an area covered by the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Participation in the SJMSCP is voluntary and the Project may elect to participate in the Plan. There are no other Natural Community Conservation Plans, or other approved local, regional, or state habitat conservation plans covering the Project area. The Project does not conflict with the SJMSCP or any other Natural Community Conservation Plan, or other approved local, regional, or state 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: The Project will not affect flow in the Delta.

ER PA/Cal. Code Regs., tit.23, § 5005.1 - **Contributions to Restoring Ecosystem Function and Providing Social Benefits**

Effective Date April 1, 2025

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

Yes

Answer Justification: The Project will contribute to restoring ecosystem function and providing social benefits by combining levee rehabilitation and flood protection with habitat restoration. The Project will create approximately 1 acre of Delta Levee Waterside Habitat, including

approximately ¾ acre of freshwater marsh and ¼ acre of riparian forest and scrub-shrub habitat, and will establish native grasses and forbs on the waterside and landside levee slopes. The Project will also improve flood protection by rehabilitating approximately 4 miles of levee to the Delta-Specific PL 84-99 Standard, reducing the likelihood of levee failure and protecting agricultural lands, infrastructure, water supply corridors, and habitat on Staten Island. Final ISMND - signed.pdf

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ER P2 / Cal. Code Regs., tit. 23, § 5006- **Restore Habitats at Appropriate Elevations**

For covered actions with a Notice of Preparation, Negative Declaration, or Mitigated Negative Declaration issued before April 1, 2025, the effective date of this policy is April 1, 2027. If this applies to you, please contact Council staff.

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

Yes

Answer Justification: The Project will restore Delta levee waterside habitat on the levee waterside above Mean Lower Low Water (MLLW), elevation 3.4 feet (NAVD 88). Native riparian plants will be used to establish scrub-shrub (SS) and riparian forest (RF) habitats on the setback levee waterside slopes above the Mean High Water (MHW), elev. 6.0 (NAVD 88). The lower portion of the waterside slope below MHW will feature freshwater marsh (FM) habitat.

ER P3 / Cal. Code Regs., tit. 23, § 5007 - **Protect Opportunities to Restore Habitat**

For covered actions with a Notice of Preparation, Negative Declaration, or Mitigated Negative Declaration issued before April 1, 2025, the effective date of this policy is April 1, 2027. If this applies to you, please contact Council staff.

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

N/A

Answer Justification: The Project is not located within a priority habitat restoration area.

ER P4 / Cal. Code Regs., tit. 23, § 5008 - **Expand Floodplains and Riparian Habitats in Levee Projects**

For covered actions with a Notice of Preparation, Negative Declaration, or Mitigated Negative Declaration issued before April 1, 2025, the effective date of this policy is April 1, 2027. If this applies to you, please contact Council staff.

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

Yes

Answer Justification: The Project is consistent with ER P4 / Cal. Code Regs., tit. 23, § 5008 because it includes construction of approximately 700 linear feet of setback levee along the confluence of the South and North Mokelumne Rivers, providing the opportunity to establish habitat enhancements on the levee waterside. The Project will establish approximately 1 acre of Delta Levee Waterside Habitat, including freshwater marsh habitat between MLLW and Mean High Water (MHW) and riparian/scrub-shrub habitat above MHW.

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: Restoration shall utilize plant species native to the Project vicinity or region and include a diverse community structure (plantings shall include both woody and herbaceous species). Restoration shall include control and proper disposal of invasive weeds. An invasive species management plan will be prepared that meets the requirements set forth in Delta Plan Mitigation Measure 4-1. Final MMRP.pdf, Final ISMND - signed.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 Project does not include 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?

N/A

Answer Justification: The Project involves rehabilitation of an existing levee, therefore the existing and future land uses are the same.

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: The Project is consistent with the following goals in RR P1: • Protects agriculture and local working landscapes. • Protects water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and primary fresh water through the Delta. • Protects existing and provide for a net increase in channel-margin habitat.

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 Project does not include 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: The Project does not include the construction of an encroachment within a floodway.

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 Project does not include the construction of an encroachment

within the Yolo Bypass, the Cosumnes River-Mokelumne River Confluence, or the Lower San Joaquin River Floodplain Bypass area.

08/12/2026