

Certification of Consistency

C20218

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **State Agency**
Government Agency: Reclamation District No. 38
Primary Contact: Martin Berber
Address: 2151 River Plaza Drive, Suite 100
City, State, Zip: Sacramento, CA 95833
Telephone/Fax: (916) 441-6850
E-mail Address: mberber@wbecorp.com

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

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**
Title: North Mokelumne River 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 408
City, State, Zip: Walnut Grove, CA 95690

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.](#)])? Yes
(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.

[7.2021 RD38 Agenda.pdf](#), [38 July 2021 Report.pdf](#)

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

Portions of the Staten Island levee system, along the North Mokelumne River, are below the Delta Specific PL 84-99 Standard, which requires levee crown elevations be 1.5 feet above the 100-year flood elevation. Additionally, seven levee sections along the North Mokelumne River are experiencing waterside erosion below the normal waterline. The Project includes 16,000 LF of landside levee rehabilitation and 6,125 LF of waterside habitat enhancement above Mean High Water (MHW) from Sta. 1040+00 - 1200+00. Landside work involves raising the levee crown and stabilizing the landside slope through the construction of a counterbalance berm. Levee sections that are experiencing erosion below the normal water line will be setback to restore waterside geometry. Aggregate base material will be placed on the levee crown to create an all-weather roadway. Waterside work includes excavation of the existing waterside slope, at the seven setback levees, to construct a habitat bench above MHW. The habitat bench and setback levee waterside slope will be planted with native species. Plantings will be monitored and maintained for 3 years to ensure success criteria is met.

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2021060346

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 08/20/2021

ANTICIPATED END DATE: (If available) 12/31/2027

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$20,000,000

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:

[Final ISMND - signed.pdf](#), [Resolution Adopting ISMND.pdf](#), [NOD - filed.pdf](#), [Final MMRP.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 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.

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

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 best available science with respects to levee design and construction. The Project was designed to meet and exceed the Delta Specific PL 84-99 Standard in regards to levee geometry and stability. A geotechnical evaluation report was prepared by Hultgren-Tillis Engineers which documents subsurface site conditions, levee design parameters, and levee stability. 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). The Restoration Plan will be prepared as an adaptive management and monitoring program consistent with the framework established in the Delta Plan Appendix 1B. [Geotechnical Evaluation.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:

Prior to the construction of habitat enhancement on the setback levees, a detailed restoration plan will be prepared and submitted to CDFW and NMFS 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 ISMND - signed.pdf](#), [Final MMRP.pdf](#)

[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 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 Project will restore riparian habitat on the levee waterside above elevation 6.0 (NAVD 88); Mean High Water (MHW) in the Project area is approximately elevation 5.9. The riparian benches will be inundated daily at Mean Higher High Water (MHHW), elevation 6.3, thus providing intertidal habitat. The riparian bench elevation was selected to avoid in-water work as much as possible and the associated impacts. 1.449 acres of riparian forest (RF) habitat will be planted on the riparian benches and 2.613 acres of

scrub-shrub (SS) will be planted on the setback levee waterside slopes.

[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?

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**

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

Yes

Answer Justification:

The Project is consistent with ER P4 since it includes the construction of 7 setback levees, totaling 6,125 linear feet (~1.16 miles), along the North Mokelumne River (NMR). A bathymetric survey conducted in 2018 revealed that sections of the NMR levee were experiencing erosion below the normal water line. The 7 setback levee sites were selected to address waterside slope deficiencies caused by the erosion. In addition to addressing waterside slope deficiencies, the 7 setback levees will provide opportunities to enhance riparian habitat. 1.449 acres of riparian forest (RF) habitat will be planted on the riparian benches and 2.613 acres of scrub-shrub (SS) will be planted on the setback levee waterside slopes.

[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 ISMND - signed.pdf](#), [Final MMRP.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.

07/20/2021