Appeal of Certification of Consistency

C20203-A1

Step 1 - Appeallant(s) Information

Appellant Representing:	Solano County Water Agency
Primary Contact:	Alexander A. Rabidoux
Address:	810 Vaca Valley Parkway, Suite 203
City, State, Zip:	Vacaville, CA 95688
Telephone/Fax:	(707) 455-1106
E-mail Address:	arabidoux@scwa2.com

Step 2 - Covered Action being Appealed

Covered Action ID:	C20203
Covered Action Title:	Lower Yolo Ranch Restoration Project
Agency Subject to Appeal:	Westlands Water District
Contact Person Subject to Appeal:	Jose Gutierrez
Address:	3130 North Fresno St
City, State, Zip:	Fresno, CA 93703
Telephone/Fax:	(559) 224-1523
E-mail Address:	carl.jensen@icf.com
Covered Action Description:	The proposed Lower Yolo Restoration Project (proposed project) is being undertaken as partial fulfillment of the 8,000-acre tidal restoration targets contained within the Reasonable and Prudent Alternatives of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (2008) and the National Marine Fisheries Service (NMFS) Salmonid Biological Opinion (2009) issued to the U.S. Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR) for impacts associated with coordinated operation of the Central Valley Project (CVP) and the State Water Project (SWP). The proposed project is also anticipated to serve as partial fulfillment of tidal restoration goals for DWR's EcoRestore program. Westlands Water District (WWD) proposes to convert existing agricultural lands to approximately 1,671 acres of tidal perennial emergent marsh. The proposed project would include physical and hydrological modifications as well as land use changes, to approximately 2,286 acres (project footprint) within the 3,427-acre project site. Actions within the restoration footprint would include the following. 1. Restoring approximately 1,671 acres of tidal marsh, including 12 acres of tidal channels and swales; enhancing approximately 28 acres of tidal marsh; and enhancing approximately 49 acres of riparian habitat. Restoration and enhancement measures would involve eliminating or moving existing water control infrastructure elements, grading some lands to facilitate establishment of intertidal wetlands, removing irrigation and grazing, and excavating new tidal channels and swales to connect restored and enhanced wetland areas to adjacent tidal water bodies. 2. Enhancing approximately 384 acres of transitional uplands within a grazing buffer by removing agricultural irrigation. Limited grazing may be allowed in this buffer area for invasive plant management. 3. Relocating two existing tide gates, one to be the primary tide gate for irrigation

supply off the Toe Drain, the second as a backup tide gate off of Liberty Cut, both of which can be adaptively managed in the winter to maximize action area benefits, and constructing additional drainage ditches along the periphery of the action area to ensure drainage needs for lands outside the action area are met. Installation of two water metering telemetry towers in upland areas will also take place during construction. One will be located adjacent to the existing southwestern tide gate on Shag Slough, and the other one will be installed adjacent to the reconstructed tide gate along the Toe Drain. 4. Removing approximately 214 ditch culverts and 344 irrigation spiles (small pipes connecting ditches to landside irrigated features). 5. Creating an approximately 102 acres permanent soil stockpile in the northwest corner of the site on existing agricultural fields 6. Creating approximately 16 acres of temporary haul roads that will be removed after construction is complete 7. Establishing one main staging area and five smaller staging area for equipment storage and refueling. Each staging area would be completed enclosed by exclusion fencing to prevent access by terrestrial wildlife and would contain containment measure for all construction liquids and materials such as diesel fuel, hydraulic oil, and diesel exhaust fluid (DEF). All staging area would be located

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 inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: The Lower Yolo Ranch Restoration Project both compliments and conflicts

with Article 3 – Consistency with the Regulatory Policies Contained in the Delta Plan. Specifically, the project compliments § 5006 (Restore Habitats at Appropriate Elevations) but conflicts with § 5011 (Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats). The Lower Yolo Ranch Restoration Project does not fully address (i) water quality and (ii) endangered species concerns to existing municipal and agricultural intakes in close hydrodynamic proximity to the Project including the NBA, City of Vallejo Pumping Plant, Reclamation District 2068 intake, and other local YBCSC agricultural intakes. In addition, the 2013 EIR does not address more recent cumulative impacts associated with both the Lookout Slough Restoration Project and the Egbert Tract Multi Objective Project, all within the YBCSC. N-204.DSC Letter.Lower Yolo Ranch.05072020.pdf

---

c. 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 inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

In regards to the Lower Yolo Ranch Restoration Project, SCWA is concerned that there are not adequate resources, on-the-ground staff, clearly delineated authority, or long-term accountability to ensure for continued implementation of adaptive management of the Project. For example, the Lower Yolo Ranch Restoration Project was submitted by Westlands Water District, a non-Delta based public agency, with corresponding EIR documents comprised of the now significantly reduced State and Federal Contractors Water Agency (SFWCA), with broad commitments by both DWR and California Fish and Wildlife (CFW) as listed in Table 6-1 of the Adaptive Management and Monitoring Plan (AMMP). However, there is a lack of detail on future funding commitments for future Operation and Maintenance (O&M) of the Project, implementation of the AMMP, and third-party verification. In addition, leaving implementation and oversite to overtaxed resource agencies like DWR and CFW is not a guarantee of success, as shown by the CFW Lindsey Slough Restoration Project, discussed below. The Water Agency is extremely concerned that the Lower Yolo Ranch Restoration Project will become a “build-it and forget-it” project, lacking in adequate resources to conduct the AMMP and required future and long-term O&M activities. N-204.DSC Letter.Lower Yolo Ranch.05072020.pdf

DELTA PLAN CHAPTER 4

ER P5 / Cal. Code Regs., tit. 23, § 5009 - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

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

Yes, Inconsistent

Answer Justification:

The Lower Yolo Ranch Restoration Project does not detail out which Agency (if any) will manage the Project for invasive nonnative species. Table 6-1 of the AMMP indicates that DWR will be responsible for the management and monitoring responsibilities of the Project with oversight and some monitoring from CFW. However, the Division of Boating and Waterways (DBW) is the lead Agency that conducts all invasive nonnative species management (primarily with plants) in the Delta on behalf of the State of California. Similar to DWR and CFW, DBW is significantly taxed in managing invasive nonnative species throughout the entire Delta. Practically, DBW will not have the dedicated on-the-ground resources and staffing, to effectively manage invasive nonnative plants species at the Lower Yolo Ranch Restoration Project. Additionally, over the last 10-years, invasive nonnative plant species including Water Hyacinth, Brazilian Waterweed, and others have aggressively moved into the YBCSC. CFW's Lindsey Slough Restoration Project, is one of the most recent restoration projects in the YBCSC region, and has been aggressively populated by both Water Hyacinth and Brazilian Waterweed, as shown in Figure 1 (attached document). Without a funding mechanism, dedicated on-the-ground personnel assigned to the project, and no third-party oversight, the Solano County Water Agency is highly concerned that the Lower Yolo Ranch Restoration Project will reach a similar fate as other YBCSC restoration efforts, and will improve and support habitat for invasive nonnative species, conflicting with the Delta Plan and Policy ER P5. N-204.DSC Letter.Lower Yolo Ranch.05072020.pdf

DELTA PLAN CHAPTER 5

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 inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

While SCWA fully understands and appreciates the environmental objectives of the Lower Yolo Ranch Restoration Project, the Water Agency believes that the Project does not appropriately respect local land use including existing municipal and agricultural water supply intakes within the YBCSC. The Water Agency is specifically concerned about (a) water quality and (b) biological impacts to existing municipal and agricultural intakes within the lower YBCSC, including the NBA, Reclamation District 2068 intake, and numerous agricultural diversions, as shown in Figure 2 (attached document). For water quality, extensive modeling was conducted by DWR in 2015 as part of the Bay Delta Conservation Plan (BDCP) – Recirculated DEIR (RDEIR). In Section 5.2.2.4 (Cumulative Impacts, Water Quality) of the RDEIR, Impact WQ-3 identifies the NBA as being negatively impacted by Bromide associated primarily with habitat restoration projects, as described below (excerpt from page 5-77 of the RDEIR). The 2013 Lower Yolo Ranch EIR documents do not adequately address the cumulative impacts associated with all of the planned YBCSC restoration projects with regards to existing local and regional water supply intakes within the lower YBCSC. "The primary driver of the adverse cumulative condition was the assumed amount and location of tidal habitat restoration to be implemented as part of the

alternative. The amount of tidal habitat restoration assumed for Alternatives 4A, 2D, and 5A is substantially less than assumed for Alternative 4, such that it is not expected to significantly affect Delta hydrodynamics and source water fractions. However, a substantial amount of tidal habitat restoration is still anticipated to occur in the future as part of separate actions (e.g., the California Water Action Plan/EcoRestore), which could result in a greater portion of higher-bromide concentration water in the restored areas, thus contributing to elevated long-term average and drought period bromide concentrations in those areas. Thus, the cumulative condition for bromide is still considered adverse." For biological impacts, one of the primary and worthwhile objectives of the Lower Yolo Ranch Restoration Project is to "enhance regional food web productivity in support of delta smelt (Hypomesus transpacificus) recovery and provide rearing habitats for outmigrating salmonids utilizing the Yolo Bypass" (submitted GP1(b)(1) Coequal Goals for Lower Yolo Ranch Restoration Project). However, the EIR and supporting documents do not include any analysis, assessment, potential impacts, or recommended solutions, including Safe Harbors Agreements, etc. to minimize impacts to existing agricultural and municipal intakes within the YBCSC, including the NBA, Reclamation District 2068 intake, and numerous agricultural diversions, as shown in Figure 2 (attached document). N-204.DSC Letter.Lower Yolo Ranch.05072020.pdf

05/07/2020