



May 22, 2020

NOTICE OF PUBLIC HEARING

The Delta Stewardship Council will hold a Public Hearing regarding the appeal of the certification of consistency submitted on April 7, 2020, by the

Westlands Water District

for the

Lower Yolo Ranch Restoration Project
(Certification Number C20203)

The Public Hearing will commence on

July 6, 2020 at 9:30 AM

In accordance with the Governor's Executive Order N-25-20 issued on March 12, 2020, and the Governor's Executive Order N-29-20 issued on March 17, 2020, the Delta Stewardship Council will continue to provide opportunities for remote participation by Councilmembers, staff, and the public with prudent measures to reduce community transmission of COVID-19.

The hearing will be conducted entirely remotely. There will not be a public, in-person access location. Members of the public may observe the meeting via webcast. To view the webcast, click the link (<https://cal-span.org/static/meetings-DSC.php>) to take you to the video player and press play to join the webcast. The link for this meeting will be available on the day of the meeting. Upon entering the webcast, you should hear the audio out of your computer and see any presentations on your screen. For best results, please use Microsoft Edge or Mozilla Firefox to view the webcast.

For any member of the public interested in providing comments or listening to the hearing via a phone line, please email engage@deltacouncil.ca.gov or call (916) 798-9817, and provide your name and organization (if applicable). The Clerk will then provide the link and/or call-in information to join the meeting. Please mute your phone upon call-in, until prompted by the Chair to provide your comment. Members of the public who do not wish to join the meeting remotely or call-in can also call or email their comment for the Council Clerk to read to the Council during the agenda item.

If you have any questions, concerns, or issues with the webcast, please contact the Council at engage@deltacouncil.ca.gov.

Thank you for your consideration.

Webcast

The hearing will be webcast at: <https://cal-span.org/static/meetings-DSC.php>

The Delta Stewardship Council (Council) will hold a public hearing regarding the appeal of the certification of consistency submitted by the Westlands Water District regarding the Lower Yolo Ranch Restoration Project, Certification Number C20203. The remote hearing will take place at the time, date and webcast location listed above. The Council will make findings either denying the appeal or remanding the matter to Westlands Water District no later than 60 days following the hearing.

BACKGROUND

The Delta Reform Act of 2009 requires that a state or local public agency that proposes to undertake a covered action must, prior to initiating the implementation of that action, submit a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, § 85225.) On April 7, 2020, Westlands Water District submitted a certification of consistency to the Council regarding the Lower Yolo Ranch Restoration Project, which is a covered action.

The Delta Reform Act allows any person who claims that a covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on one or both of the coequal goals¹ or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of a certification of consistency submitted to the Council. (Wat. Code § 85225.10, subd. (a); Administrative Procedures § 6).

Solano County Water Agency (Appellant) submitted a timely appeal (Appeal No. C20203-A1) of the certification of consistency, which Council staff has deemed filed pursuant to Section 7 of the Council's [Administrative Procedures Governing Appeals](#)². The Council received the appeal from Solano County Water Agency on May 7, 2020. Pursuant to Section 7 of the Council's Administrative Procedures, Council staff reviewed the appeal to determine if the appeal contained all the information required to be

¹ "Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code § 85054)

² <http://deltacouncil.ca.gov/docs/covered-actions-delta-plan/appeals-procedures>

included. This review was done on May 8, 2020, per the Council's usual practice. However, Council staff made an inadvertent clerical error and included the incorrect date on the Council's notice on May 11, 2020, and email communication to the service list dated May 19, 2020. The Council's notice dated May 11, 2020, and email communication should have indicated that the appeal was filed May 7, 2020. It is the Council's usual practice to backdate the Council's notice with the date the appeal was submitted and not the date the Council staff conducted the review.

This appeal raises appealable issues within the Council's jurisdiction. The Delta Reform Act therefore requires that the Council hold a hearing within 60 days of the effective filing date of the appeal, and that the Council makes its decision on the appeal within 60 days of the hearing. (Wat. Code, § 85225.20.)

WEB PAGE

The Council's covered action webpage is designed, developed, and maintained to comply with California Government Code Sections 7405 and 11135 and Web Content Accessibility Guidelines. Council notices, party submittals, submittals from the public, and the record supporting the certification of consistency that meet the Web Content Accessibility Guidelines³ are posted online at the Council's Lower Yolo Ranch Restoration Project [covered action web page](#). Documents that do not comply with the Web Content Accessibility Guidelines are not available on the Council's covered action webpage but are available upon request. Please email loweryolocert@deltacouncil.ca.gov or call (916) 798-9817 to request access and include the name(s) of the document(s) you are seeking. You may also request the entire record or appeal for the Lower Yolo Ranch Project. A copy of the record will be mailed via USB flash drive upon request or provided through a download link.

SUBSTANTIAL EVIDENCE SCOPE OF REVIEW

The scope of the Council's review in this matter is limited to whether or not the April 7, 2020, Certification of Consistency for the Lower Yolo Ranch Restoration Project submitted by Westlands Water District was supported by substantial evidence in the record before Westlands Water District at the time it submitted the certification. (Wat. Code § 85225.25.)

³The Web Content Accessibility Guidelines are published by the Web Accessibility Initiative of the World Wide Web Consortium.

HEARING PROCEDURES

The hearing will be conducted in accordance with Chapter 3 of the Delta Reform Act (Wat. Code §§ 85225-85225.30) and the Council's Administrative Procedures. Council Chair Susan Tatayon will serve as the Presiding Officer.

Westlands Water District, the Appellant, the Delta Protection Commission, or any other interested person, will be able to submit written and/or oral testimony at the hearing, as described below. The Council prefers that all parties or interested persons desiring to provide statements at the hearing do so in writing. The Council encourages parties and/or interested persons with common interests to work together to make the hearing process more efficient. The Council reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

HEARING PARTICIPATION

Parties

The parties to the hearing are Westlands Water District and the Appellant. Contact information for each of the parties is listed in the Service List (Attachment A hereto). The Council may update the Service List as necessary, and will distribute any updated list to the parties. The current Service List will be available at the Council's Lower Yolo Ranch Restoration Project [covered action web page](#).

Hearing Presentations and Testimony

The parties, along with the Delta Protection Commission, or any other interested person, may testify before the Council at the hearing regarding the appeals. (Administrative Procedures § 11.) **Presentations may be oral or in writing, shall address only whether substantial evidence in the record before Westlands Water District at the time it submitted the certification supports the certification of consistency, and shall be as brief as possible.** (*Id.*)

The Council strongly prefers that parties and other interested persons submit written statements ahead of the hearing. The Council requests that any party or interested person who intends to present an oral statement at the hearing also submit a written statement in order to assist the Council's consideration of such statements. The Council encourages all parties and interested persons to submit written statements electronically. Written statements should be provided no later than **Monday June 22, 2020 at noon** to ensure that they may be circulated to the Council

members for review ahead of the hearing.⁴ Please submit written statements to: loweryolocert@deltacouncil.ca.gov, and copy all parties on the Service List. Please include "C20203" in the subject line of any email.

The Council encourages all parties and interested persons to submit any other materials to be presented at the hearing, including additional evidence, presentation slides and other visual displays, to the Council no later than **Wednesday July 1, 2020 at 5:00 PM**. Please submit any presentation materials to: loweryolocert@deltacouncil.ca.gov, and copy all parties on the Service List. Please include "C20203" in the subject line of any email. If electronic submittal is not possible, you may mail or deliver your submittals to the following address: Clerk to the Council, ATTN: Lower Yolo Ranch Restoration Project C20203, Delta Stewardship Council, 980 9th Street, 15th Floor, Sacramento, California 95814

If you intend to use power-point or other electronic slides during your presentation, and you have not emailed them to the Council address above by Wednesday July 1, 2020 at 5:00 PM, you should contact Council staff early (recommended at least one hour ahead of the start of the hearing) and provide a copy of the presentation for the Council Clerk. To help you have an orderly presentation, the Council Clerk requests that the titles of the submitted electronic presentations indicate the party name (e.g., Westlands Water District, Appellant, Delta Protection Commission, other).

Please be advised that this is an appellate proceeding based on the record before the Westlands Water District at the time it submitted the Lower Yolo Ranch Restoration Project certification of consistency. The Council will not receive sworn testimony, and the parties shall not conduct cross-examination or provide rebuttal testimony. All presentations and written statements shall be based solely upon evidence and legal argument, and shall address only whether substantial evidence in the record before the Westlands Water District supports the certification of consistency.⁵

Presentation Order and Time Limits

The order of presentation at the hearing shall be as follows:

1. Westlands Water District
2. Appellant
3. All Other Interested Persons (Public Comment)

⁴ In appropriate circumstances, Council staff may prepare summaries of the statements for circulation to Council members.

⁵ "Legal argument" refers to the appellants' submittals pursuant to Section 6 of the Administrative Procedures, and testimony (written and/or oral) pursuant to Section 11 of the Administrative Procedures.

Westlands Water District and the Appellant will each be allowed 30 minutes for oral presentation. The Delta Protection Commission has chosen not to provide oral testimony at the hearing. All other interested persons will each be allowed 3 minutes for oral presentation. Additional time will be allowed for questions by the Council members or Council staff. The Presiding Officer retains discretion to shorten the All Other Interested Persons (public comment) time limit prior to the commencement of the All Other Interested Persons period as necessary.

If you have questions or need reasonable accommodation due to a disability, please contact the Delta Stewardship Council's Meeting Services office at (916) 445-5511, or TDD (800) 735-2929.

Questions for Westlands Water District and Appellant

The Council offers the following additional guidance to assist the parties in focusing their written and oral hearing presentations.

The scope of the Council's review in this matter is limited to whether or not the April 7, 2020, Certification of Consistency for the Lower Yolo Ranch Restoration project was supported by substantial evidence in the record before Westlands Water District (Westlands) at the time it submitted the certification. (Wat. Code § 85225.25.) **To assist in this review, the Council requests that Westlands Water District and the Appellant (where identified) address the following questions in any written materials submitted to the Council prior to the hearing and/or in any oral presentations at the hearing.**

The questions are organized by general legal issues, and then by Delta Plan policy.

A) General Legal Issues

Westlands Water District and the Appellant:

1. For the factual allegations that you wish the Council to consider, please cite specific supporting evidence.
2. For the document(s) cited as supporting evidence for a factual allegation, please cite the specific page(s) that correspond to the allegation.

B) G P1(b)(1) ([Cal. Code Regs., tit. 23 5002, subd. \(b\)\(1\)](#)): Coequal Goals

Question for Westlands Water District:

1. Your certification of consistency does not assert inconsistency with any individual Delta Plan policy. Please clarify whether you intend to rely on G P1(b)(1) to demonstrate consistency with the Delta Plan? If you intend to rely

on G P1(b)(1) to demonstrate consistency with the Delta Plan, include an explanation describing how the covered action is consistent with the coequal goals. Also clearly identify any areas where consistency with regulatory policies may not be feasible.

Question for the Appellant:

1. Please identify and cite evidence in the record that supports your assertion that Westlands' certification of consistency is not consistent with this policy.

C) GP 1(c) ([Cal Code Regs., tit. 23, § 5002\(1\)\(c\)](#)): Conservation Measures

Questions for the Appellant:

1. In the Appeal Letter submitted on May 7, 2020, you reference Delta Plan policy G P1(c), and state that "The adopted Yolo HCP/NCCP should be evaluated to ensure that there are no significant impacts associated with the proposed Lower Yolo Ranch Restoration Project." (Appeal Letter, p. 3.) The certification of consistency states that policy GP 1(c) is not applicable because the covered action "is not being implemented pursuant to a NCCP or HCP. The Yolo County HCP/NCCP was not utilized during Project permitting."

What specific evidence in the record demonstrates that the covered action is being implemented pursuant to the Yolo HCP/NCCP? What specific evidence in the record demonstrates that the Appellant is relying on policy G P1(c) to demonstrate consistency with Cal. Code Regs., tit. 23, sections 5005 through 5009?

2. What specific evidence in the record demonstrates that the covered action is inconsistent with policy G P1(c)?

D) GP 1(b)(4) ([Cal Code Regs., tit. 23, § 5002\(b\)\(4\)](#)): Adaptive Management

Questions for Westlands Water District:

1. Please cite specific evidence in the record that adequate resources exist (including staff and future funding) to ensure continued adaptive management implementation of the covered action.
2. Please cite specific evidence in the record regarding clearly delineated authority to ensure continued adaptive management implementation.
3. Please provide specific evidence in the record demonstrating sufficient detail regarding implementation of the Adaptive Management and Monitoring Plan.

4. Please provide specific evidence in the record supporting the assertion that California Department of Fish and Wildlife (DFW) and California Department of Water Resources (DWR) have the capacity to successfully oversee and implement the Adaptive Management and Monitoring Plan.

Questions for the Appellant:

1. Please cite specific evidence in the record that supports your statements that there are not adequate resources (including staff and future funding) to ensure continued adaptive management implementation of the covered action.
2. Please cite specific evidence in the record to support your statement that the covered action lacks clearly delineated authority to ensure continued adaptive management implementation.
3. Please provide specific evidence in the record demonstrating a lack of detail regarding implementation of the Adaptive Management and Monitoring Plan.
4. Please provide specific evidence in the record supporting your assertion that the CDFW and DWR do not have the capacity to successfully implement and oversee the Adaptive Management and Monitoring Plan.

E) ER P5 ([Cal. Code Regs., tit. 23, § 5009](#)): Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Questions for Westlands Water District:

1. Please cite specific evidence in the record that demonstrates the potential for the covered action to introduce or improve habitat conditions for nonnative invasive species was fully considered, including any assessment of the current or baseline conditions.
2. Please cite specific evidence in the record that demonstrates that the covered action would avoid or mitigate introductions of invasive nonnative species, including without limitation, water hyacinth and Brazilian waterweed, in a way that appropriately protects the ecosystem.
3. Please cite specific evidence in the record that demonstrates that the covered action would avoid or mitigate improved habitat conditions for invasive nonnative species, including without limitation, water hyacinth and Brazilian waterweed, in a way that appropriately protects the ecosystem.
4. Please cite specific evidence in the record that specifies responsible parties and funding mechanisms for managing invasive nonnative species.

5. Please cite specific evidence in the record that demonstrates that DWR's responsibilities to manage and monitor the covered action, with oversight and monitoring by CDFW, will be sufficient to avoid or mitigate improved habitat conditions by the covered action for invasive nonnative species in a way that appropriately protects the ecosystem.

Questions for the Appellant:

1. Please cite specific evidence in the record that demonstrates that the covered action would not avoid or mitigate introductions of invasive nonnative species, including without limitation, water hyacinth and Brazilian waterweed, in a way that appropriately protects the ecosystem.
2. Please cite specific evidence in the record that demonstrates that the covered action would not avoid or mitigate improved habitat conditions for invasive nonnative species, including without limitation, water hyacinth and Brazilian waterweed, in a way that appropriately protects the ecosystem.
3. Please cite specific evidence in the record that demonstrates that DWR's responsibilities to manage and monitor the covered action, with oversight and monitoring by CDFW, will not be sufficient to avoid or mitigate improved habitat conditions by the covered action for invasive nonnative species in a way that appropriately protects the ecosystem.
4. Please cite specific evidence in the record that demonstrates that Department of Parks and Recreation, Division of Boating and Waterways (DBW), will be the agency responsible for managing the avoidance or mitigation of improved habitat conditions by the covered action for invasive nonnative species in a way that does not? appropriately protect the ecosystem.
5. Please cite specific evidence in the record that demonstrates that 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.
6. Please cite specific evidence in the record that demonstrates that Lindsey Slough is relevant to the potential for the covered action to improve habitat conditions for invasive nonnative species.

F) DP P2 ([Cal Code Regs., tit. 23, § 5011](#)): Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Questions for Westlands Water District:

1. Please cite specific evidence in the record that demonstrates that the covered action was sited to avoid or reduce conflicts with existing uses, including without limitation, the North Bay Aqueduct (NBA) water supply intakes, the City of Vallejo Pumping Plant water supply intakes, Reclamation District (RD) 2068 water supply intakes, and other agricultural water supply diversions.
2. Please cite specific evidence in the record that demonstrates that impacts to the NBA water supply intakes, the City of Vallejo Pumping Plant water supply intakes, RD 2068 water supply intakes, and other agricultural water supply diversions were avoided and reduced.

Questions for the Appellant:

1. Please cite specific evidence in the record that demonstrates that the covered action was not sited to avoid or reduce conflicts with existing uses, including without limitation, the NBA water supply intakes, the City of Vallejo Pumping Plant water supply intakes, RD 2068 water supply intakes, and other agricultural water supply diversions.
2. Please cite specific evidence in the record that demonstrates that the biological impacts of the covered action would cause conflicts with existing uses, including without limitation, the NBA water supply intakes, the City of Vallejo Pumping Plant water supply intakes, RD 2068 water supply intakes, and other agricultural water supply diversions.

WESTLANDS WATER DISTRICT'S MOTION TO DISMISS THE APPEAL

Westlands Water District has filed a motion with the Council that seeks to dismiss the appeal for being untimely. For the following reasons that motion is now moot: Council staff have determined that an inadvertent clerical error was made in the Council's notice dated May 11, 2020 and email communication dated May 19, 2020. The Council's notice dated May 11, 2020 and email communication should have indicated that the appeal was filed on May 7, 2020.

RECORD

Westlands Water District submitted and certified the record supporting the certification of consistency pursuant to Administrative Procedures Section 4.b. This is the record that must contain substantial evidence to support the Westlands Water District's findings within the certification of consistency. (See Wat. Code, § 85225.25.) Portions of the record did not meet Web Content Accessibility Guidelines. Documents that do not

comply with the Web Content Accessibility Guidelines are not available on the Council's covered action webpage but are available upon request.⁶

The Council, or its Executive Officer, may supplement Westlands Water District's record if the Council or the Executive Officer determines that additional information was part of Westlands Water District's record, but was not included in Westlands Water District's Section 4.b submittal to the Council. (Administrative Procedures § 10.) The Council may also take official notice of any generally accepted technical or scientific matter within the Council's jurisdiction, and of any fact that may be judicially noticed by the courts. (Appeal Procedures § 29.) The Council may take such notice on its own motion, or at the request of any party or interested person. Such notice will be addressed on a case-by-case basis, considering the specific technical or scientific matters or facts.

Any party or other person seeking to request that the Council or the Executive Officer add any document to the Westlands Water District's record under Section 10, or that the Council take official notice of any matter, document or fact under Section 29, should submit a written request, along with a copy of any document sought to be added to the record, no later than **Monday, June 29, 2020 at noon**. The Council will consider any such requests and include any necessary rulings in the determination on the appeals.

Please be advised that any oral requests or argument regarding Sections 10 or 29 shall count against the hearing time allotments described above.

SUBMITTALS TO THE DELTA STEWARDSHIP COUNCIL

All documents, including written testimony and other materials submitted prior to hearing, should be submitted to the Council at the following email address: loweryolocert@deltacouncil.ca.gov. Please include "Lower Yolo Ranch Restoration Project C20203" in the subject of any email. The Council strongly encourages all parties and interested persons to submit all submittals electronically and in compliance with Web Content Accessibility Guidelines, in order to facilitate distribution to the Council members and posting to the web page. If electronic submittal is not possible, you may mail your submittals to the following address:

Clerk to the Council
ATTN: Lower Yolo Ranch Restoration Project C20203
Delta Stewardship Council
980 9th Street, 15th Floor

⁶ Please email loweryolocert@deltacouncil.ca.gov or call (916) 445-5511 to request access and include the name(s) of the document(s) you are seeking. You may also request the entire record or appeal for the Lower Yolo Ranch Project. A copy of the record will be mailed via USB flash drive upon request or provided through a download link.

Sacramento, CA 95814

Parties listed on the Service List must copy all submittals to the Service List. Interested persons who are not listed on the Service List may copy submittals to the Service List. All submittals that are in compliance with Web Content Accessibility Guidelines will be posted to the Council's Lower Yolo Ranch Restoration Project [covered action web page](#).

PROHIBITION ON EX PARTE COMMUNICATIONS

The Council's appellate proceedings are subject to the prohibition on ex parte communications. (Gov. Code § 11430.10 et seq; Administrative Procedures §§ 26-28.) Parties and interested persons, including any employees or representatives, may not communicate directly or indirectly with Council members or Council staff regarding any issue in this proceeding, without notice and opportunity for all parties to participate in the communication. (Gov. Code § 11430.10.) The only exceptions to this prohibition are communications required for disposition of an ex parte matter specifically authorized by statute, or communications concerning a matter of procedure or practice that is not in controversy. (Gov. Code § 11430.20.)

Please see the Council's Notice regarding Ex Parte restrictions for this matter, posted on the Council's [covered action web page](#), for more details.

If you have any questions concerning matters of procedure or practice that are not in controversy, please contact Bethany Pane, Chief Counsel, at (916) 730-1119 (telework phone number) or at Bethany.Pane@deltacouncil.ca.gov. Please do not contact Council members directly.

FUTURE PROCEEDINGS

In order to help the parties and other interested persons plan their schedules, the Council provides the following anticipated dates for future proceedings:

1. At its discretion, the Council may hold a workshop to receive comments on a draft determination regarding the appeal. If it holds a workshop, the Council will separately notice that workshop.
2. The Council anticipates that it will consider the final determination during a hearing to be conducted on September 4, 2020.

The Council Clerk will separately post notices and agendas for any workshop and for the final Council hearing. Such notices will be distributed to the Service List.

ELECTRONIC MAILING LIST

After this initial notice, all future correspondence and information from the Council regarding this matter will be sent via electronic mail to the parties listed in the Service List (Attachment A hereto), and posted to the Council's Lower Yolo Ranch Restoration Project [covered action web page](#). All submittals to the Council may be made to: loweryolocert@deltacouncil.ca.gov (parties must copy all other parties on the Service List), and please include "Lower Yolo Ranch Restoration Project C20203" in the subject line.

Interested persons may receive future correspondence from the Council on this matter by subscribing to the Council's electronic mailing list. You may subscribe to the Council's electronic mailing list here: <http://deltacouncil.ca.gov> (scroll to "Get Updates" and click "Subscribe").

If you are unable to receive electronic mail, you must send your request to receive a hard copy of future correspondence via U.S. mail to: Clerk to the Council, Delta Stewardship Council, 980 9th Street (15th Floor), Sacramento, CA 95814, and include "Lower Yolo Ranch Restoration Project C20203" in the subject line. If the current address we have for you does not contain an email address and you have access to email, please send your email address as soon as possible to loweryolocert@deltacouncil.ca.gov and please include "Lower Yolo Ranch Restoration Project C20203" in the subject line.

You should act as soon as possible to ensure you receive all future correspondence.

ATTACHMENT A – SERVICE LIST

DELTA STEWARDSHIP COUNCIL

**SERVICE LIST FOR LOWER YOLO RANCH RESTORATION PROJECT
CERTIFICATION OF CONSISTENCY APPEAL**

Party	Primary Contact	E-mail Address
Solano County Water Agency [Appeal No: C20203-A1]	Alexander A. Rabidoux Roland Sanford Jeanne M. Zolezzi	arabidoux@scwa2.com rsanford@scwa2.com jzolezzi@herumcrabtree.com
Westlands Water District ICF Consulting	Jose Gutierrez Carl Jensen	jgutierrez@wwd.ca.gov carl.jensen@icf.com
Delta Stewardship Council	Dan Constable Erika Giorgi	loweryolocert@deltacouncil.ca.gov Erika.Giorgi@deltacouncil.ca.gov

Current as of: May 22, 2020