

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency Local Agency

Government Agency: Department of Water Resources
Primary Contact: Sean Bagheban
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B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: Will Carry Out Will Approve Will Fund

Step 2 - Covered Action Profile

IT IS RECOMMENDED THAT YOU ENGAGE IN EARLY CONSULTATION WITH DSC STAFF AND/OR COMPLETE THE COVERED ACTION CHECKLIST TO DETERMINE IF THE PLAN, PROGRAM OR PROJECT IS CONSIDERED A COVERED ACTION AND TO IDENTIFY RELEVANT REGULATORY POLICIES

A. COVERED ACTION PROFILE: Plan Program Project

Title: (not to exceed 50 characters) Sherman Island Whale's Mouth Wetland Restoration Project

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

Proponent Name: Department of Water Resources
Address: 1416 9th Street, Suite 1601
City, State, Zip: Sacramento, CA 95814

C. **AT LEAST 10 DAYS PRIOR TO THE SUBMISSION OF A CERTIFICATION OF CONSISTENCY TO THE COUNCIL**, 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.]) with regard to its certification, must post for public review and comment, their draft certification on their website and in their office, and 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.
(Note: Any public comments received during this process must be included in the record submitted to the Council in case of an appeal.)

If applicable, did you comply with this requirement? YES NO N/A

In General: (23 CCR SECTION 5002 (a), (b), (1)) This regulatory policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action.

This regulatory policy 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.

Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies listed under Delta Plan Chapters 3, 4, 5 and 7 of this form implicated by the covered action. 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:

Mitigation Measures (23 CCR SECTION 5002 (b), (2))

The covered action is not exempt from CEQA, and includes applicable feasible mitigation measures identified in the Delta Plan’s Program Environmental Impact Report, (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.

a.

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

YES NO N/A

A list of project specific mitigation measures, as identified in the CEQA document, is attached (mitigation measures.pdf).

Answer Justification: Another document (Whale's Mouth - All Mitigation Measures.pdf) is a comprehensive list of all mitigation measures extracted from the Delta Plan PEIR. Consistency with appropriate mitigation measures for this project is shown in this document. [mitigation measures.pdf](#), [Whales Mouth - All Mitigation Measures.pdf](#)

Best Available Science (23 CCR SECTION 5002 (b), (3))

The covered action documents use of best available science as relevant to the purpose and nature of the project.

b.

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1A](#) is referenced in this regulatory policy.

YES NO N/A

Previous studies conducted by the California Department of Water Resources, in cooperation with other agencies, show subsidence reversal and carbon sequestration can be achieved through permanently flooded wetlands. A list of research publications showing these outcomes is attached and similar techniques are incorporated into this project. [BAS Reference List.pdf](#)

Answer Justification:

Adaptive Management (23 CCR SECTION 5002 (b), (4))

The covered action involves ecosystem restoration or water management, and includes adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management

c.

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1B](#) is referenced in this regulatory policy.

YES NO N/A

The West Delta Program receives continual funding from the State Water Contractors, which will be used to fund the operations and maintenance elements of this project. Both a Habitat Management Plan that is contained within the project specific CEQA document and an Adaptive Management Activities table are attached. [Extracted Habitat Management Plan for Whales Mouth 5-30-14.pdf](#), [Adaptive Management Activities.pdf](#)

Answer Justification:

[WR P1 / 23 CCR SECTION 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: The covered action does involve water that is exported from, transferred through, or used in the Delta; however one or more water suppliers (see 23 CFR 5001(ii); also 5001(c) and 5001(hh)) will not receive water as a result of the covered action.

[WR P2 / 23 CCR SECTION 5004](#) - Transparency in Water Contracting

Is the covered action consistent with this regulatory policy? [Appendix 2A](#) and [Appendix 2B](#) are referenced in this regulatory policy.

YES NO N/A

Answer Justification: The covered action does not involve entering into or amending water supply or water transfer contracts subject to DWR Guideline 03-09 and/or 03-10 (each dated July 3, 2003), (Appendix 2A).

DELTA PLAN CHAPTER 4

Conservation Measure: (23 CCR SECTION 5002 (c))

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 a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available?

YES NO N/A

Answer Justification: The covered action does not include a natural community conservation plan or a habitat conservation plan.

[ER P1 / 23 CCR SECTION 5005](#) - Delta Flow Objectives

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: The covered action does not significantly affect flow in the Delta.

[ER P2 / 23 CCR SECTION 5006](#) - Restore Habitats at Appropriate Elevations

Is the covered action consistent with this regulatory policy? [Appendix 3](#) and [Appendix 4](#) are referenced in this regulatory policy.

YES NO N/A

Answer Justification: The attached project site map identifies the location of this project and is consistent with the elevation map identified in this section. [project map.pdf](#)

[ER P3 / 23 CCR SECTION 5007](#) - Protect Opportunities to Restore Habitat

Is the covered action consistent with this regulatory policy? [Appendix 4](#) and [Appendix 5](#) are referenced in this regulatory policy.

YES NO N/A

Answer Justification: The covered action is outside of the priority habitat restoration areas depicted in Appendix 5.

[ER P4 / 23 CCR SECTION 5008](#) - Expand Floodplains and Riparian Habitats in Levee Projects

Is the covered action consistent with this regulatory policy? [Appendix 8](#) is referenced in this regulatory policy.

YES NO N/A

Answer Justification: The covered action does not construct new levees or substantially rehabilitate or reconstruct existing levees.

[ER P5 / 23 CCR SECTION 5009](#) - Avoid Introductions of and Habitat for Invasive Nonnative Species

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: All siphons delivering water to the project are screened and no invasive fish species will be introduced. The attached Habitat and Water Management Plan describes spraying techniques to control invasive weed species. Invasive species currently on the project site will be removed and destroyed as part of the project. [Extracted Habitat Management Plan for Whales Mouth.pdf](#)

DELTA PLAN CHAPTER 5

[DP P1 / 23 CCR SECTION 5010](#) - Locate New Urban Development Wisely

Is the covered action consistent with this regulatory policy? [Appendix 6](#) and [Appendix 7](#) are referenced in this regulatory policy.

YES NO N/A

Answer Justification: The covered action does not involve new residential, commercial, or industrial development.;

[DP P2 / 23 CCR SECTION 5011](#) - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: This project is consistent with this policy and will implement the attached Sac/Yolo Vector Control BMPs. [Extracted Vector Control BMPs for Whale's Mouth 5-30-14.pdf](#)

DELTA PLAN CHAPTER 7

[RR P1](#) - Prioritization of State Investments in Delta Levees and Risk Reduction

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: The covered action does not involve discretionary State investments in Delta flood risk management including levee operations, maintenance, and improvements.

[RR P2](#) - Require Flood Protection for Residential Development in Rural Areas.

Is the covered action consistent with this regulatory policy? [Appendix 7](#) is referenced in this regulatory policy.

YES NO N/A

Answer Justification: The covered action does not involve new residential development of five or more parcels.

[RR P3](#) - Protect Floodways

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: The covered action does not encroach within any floodway.

[RR P4](#) - Floodplain Protection

Is the covered action consistent with this regulatory policy?

YES NO N/A

Answer Justification: The Covered Action does not encroach in any of the floodplains listed in this Regulation.