



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

December 1, 2020

Michael King, P.E.
Director of Public Works
City of Lathrop
390 Towne Center Drive
Lathrop, CA 95330

Sent via email: mking@ci.lathrop.ca.us

RE: Comments on Draft Environmental Impact Report for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project (State Clearing House No. 2019110339)

Dear Michael King:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the City of Lathrop (City) Consolidated Treatment Facility Surface Water Discharge Project (Project). The Delta Stewardship Council (Council) recognizes the objective(s) of the Project, as described in the DEIR, to: provide for planned City buildout and development based on the City's General Plan by providing effluent discharge to the San Joaquin River, provide efficient and cost-effective wastewater services through buildout of the City, and maximize use of recycled water in the City presently and in the future.

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013.

As stated in the Delta Reform Act, the State has "'coequal goals' (which) means 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" (Water Code section 85054).

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which

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State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments for your consideration in preparation of the Final Environmental Impact Report (FEIR).

Comments on the DEIR

The following comments address actions outlined in the DEIR relevant to the Delta Plan.

Regulatory Setting: The FEIR should identify Delta Plan policies in the applicable regulatory setting discussions for each topic in the FEIR to which they apply.

On page 3.3-5, the DEIR describes the various amendments to the Delta Plan. This section should also identify that on March 26, 2020 the Council rescinded the April 2018 amendment to Delta Plan Policy RR P1 which set new priorities for State investment in Delta levees and restored the previous version of Policy RR P1 adopted in the Delta Plan in 2013.

Inconsistencies with the Delta Plan: Section 3.1.2 Land Use states that the "potential for the proposed Project to conflict with The Delta Plan...[is] addressed in Section 3.3 'Terrestrial Biological Resources' and 3.4 'Aquatic Biological Resources.'" (P. 3-4.) However, neither resource section clearly identifies potential conflicts with the Delta Plan, nor how those potential conflicts were analyzed and addressed. The FEIR should make these potential conflicts clear and document the analysis conducted to evaluate and resolve such potential conflicts.

Covered Action Determination and Certification of Consistency with the Delta Plan

The Council submitted a comment letter on the Notice of Preparation of an Environmental Impact Report (NOP) on December 17, 2019. In that letter, the Council outlined the multi-part test defining what activities would be considered covered actions set forth in Water Code Section 85057.5 subdivision (a), noting that the Project appears to be a covered action, and that the City must determine if the Project meets the definition of a covered action.

As stated in the DEIR Section 1.5.4 Required Permits and Approvals, the City has identified the Project as a potential covered action and the DEIR identifies a certification of consistency with the Delta Plan as a permit or approval action needed by the Project. (P. 1-6.) As the local agency carrying out the Project, the City must file a certification of consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal.

Code Regs., tit. 23, § 5001(j)(3).) The next section of this letter provides information to assist the City in preparing a certification of consistency for the Project.

Comments Regarding Delta Plan Policies

The following section describes the Delta Plan regulatory policies that may apply to the Project based on the available information in the DEIR. This information is offered to assist the City to describe the relationship between the Project and the Delta Plan in the FEIR as part of the record supporting the City's future certification of consistency.

The Delta Plan includes regulatory policies that apply to all covered actions. Below, we have highlighted key regulatory policies that may be relevant to the Project.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a certification of consistency by a state or local public agency for a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions that are not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures 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 finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The DEIR identifies several potentially significant impacts that require mitigation, including those related to air quality, terrestrial biological resources, aquatic biological resources, cultural resources, and hazards and hazardous materials. The City should review the mitigation measures in Delta Plan Appendix O which correspond to the potentially significant impacts in these five resource areas, and ensure that the mitigation measures described in the DEIR are equally or more effective than corresponding mitigation measures in Delta Plan Appendix O. In its certification of consistency for the Project, the City should explain how these mitigation measures are equally or more effective than the applicable mitigation measures contained in Appendix O.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs, tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. The City should prepare a Certification of Consistency that documents the scientific rationale for applying these six criteria to the Project. The Council’s Delta Science Program Adaptive Management Liaisons are available to provide further consultation and guidance regarding the use and documentation of best available science in the City’s future Certification of Consistency for the Project.

The certification of consistency for the Project should document how the Project has used best available science related to climate change and sea level rise that could impact the Project’s ability to discharge treated effluent and how the effluent discharges could effect water quality and harmful algal blooms.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

An adaptive management plan consistent with the framework referenced above would be required as part of a certification of consistency with the Delta Plan for the Project because the Project proposes to treat waste water/effluent and use recycled water supply. In its certification of consistency, the City should document how its adaptive management plan is consistent with the framework in Appendix 1B, and how its provisions for adaptive management are appropriate to the scope of the Project. In addition, the City should document the resources allocated to implement maintenance, monitoring, and any other adaptive management actions described in the certification. The Council’s Delta Science Program Adaptive Management

Liaisons are available to provide further consultation and guidance on documentation of adaptive management, and we strongly encourage the City to engage with the Council in early consultation regarding this matter.

Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires that the State Water Resources Control Board's Bay-Delta Water Quality Control Plan (Water Board's Bay-Delta WQCP) flow objectives be used to determine consistency with the Delta Plan.

The DEIR analysis of water quality impacts in Section 3.9 Hyrdology and Water Quality (P. 3.9-1 through 3.9-34) relies on meeting the Water Board's Bay-Delta WQCP requirements, the Central Valley Regional Water Quality Control Board's Basin Plan objectives, and the Project's National Pollutant Discharge Elimination System Permit requirements to conclude throughout the section that the Project's impact on hydrology and water quality resources are less than significant. This information should be included in the project's certification of consistency with the Delta Plan.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009) requires that covered actions fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for nonnative invasive species, striped bass, or bass in a way that appropriately protects the ecosystem.

The DEIR describes the construction of a new permanent outfall structure to discharge dechlorinated disinfected tertiary treated effluent into the San Joaquin River. (P. 2.15) While the analysis states that the Project's discharge would not significantly affect the water quality in the river at different times of the year (P. 3.4-29), it does not describe the potential effects of the permanent outfall structure and discharged effluent to introduce or improve habitat for invasive nonnative species. Such discussion should be included in the FEIR.

In its certification of consistency for the Project, the City should explain how the design, construction, and operations and maintenance elements of the permanent outfall structure and discharged effluent would avoid or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, including those identified in the DEIR. In the certification, the City should also explain how measures to avoid, minimize, or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species (such as Mitigation Measure BIO-1) are equally or more effective than Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

Closing Comments

The Council invites the City to engage with Council staff in early consultation prior to filing a certification of consistency to discuss project elements and mitigation measures that would promote the Project's consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website at <https://coveredactions.deltacouncil.ca.gov>. Please contact Anthony Navasero at Anthony.Navasero@deltacouncil.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council