



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

August 02, 2022

Stacey Jensen

Office of the Assistant Secretary of the Army

Civil Works

108 Army Pentagon

Washington, DC 20310-0108

Usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil

**RE: Comments on National Register Posting COE-2022-006-0001 –
Proposed Modernization of Army Civil Works Policy Priorities**

Dear Stacey Jensen:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on National Register Posting COE-2022-006-0001 concerning the Department of the Army, Civil Works, to include the U.S. Army Corps of Engineers (Corps) (together, “Army”) efforts to modernize the Civil Works program of the Corps related to tribal consultation and the Tribal Partnership Program; potential rulemaking actions regarding the Corps’ Regulatory Program’s implementing regulations for the Section 106 of the National Historic Preservation Act (33 CFR 325, Appendix C) and the Civil Works implementation of the Principles, Requirements, and Guidelines (PR&G) for water resources projects; and environmental justice. The primary focus of these efforts is to better serve the needs of Tribal nations and other disadvantaged and underserved communities.

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The Delta Stewardship Council and the Delta Plan

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering the State's coequal goals for the Sacramento-San Joaquin Delta (the Delta) of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, to 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. (Cal. Water Code section 85054.) Pursuant to the Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. Alongside the Council, the Corps is an active participant in the Delta Plan Interagency Implementation Committee (DPIIC), a committee comprised of the highest-ranking officials of 18 state and federal agencies with responsibilities in the Delta. DPIIC explores opportunities to align agencies' actions in the Delta watershed, showcases DPIIC agencies' achievements, and guides actions to address pressing issues affecting Delta Plan implementation.

The 2019 Five Year Review of the Delta Plan identified specific Delta Plan policies and recommendations related to EJ and disadvantaged communities including recognizing California's Human Right to Water statute (Wat. Code § 106.3) which declares that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes;" recognizing water quality concerns in small and disadvantaged communities; preserving legacy communities; and protecting recreation.

Water Supply Reliability and the Delta as a Place

The Council has provided previous comments related to the Army's application of cost benefit analysis within the Delta. In 2014, the Army released a Draft Feasibility Report and Environmental Impact Statement for the Delta Islands and Levees Feasibility Study. The goal of that study was to:

- (1) identify flood risk management and ecosystem restoration problems and opportunities in the Delta;
- (2) develop and evaluate measures to solve identified problems;

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(3) formulate and compare alternatives for ecosystem restoration; and

(4) identify a Tentatively Selected Plan for implementation.

The Army followed the Civil Works Program PR&G, which required that the plan reasonably maximize net national economic benefits consistent with protecting the nation's environment, and that the National Economic Development Plan (NED Plan), be selected unless an exception is granted. The Council understood that the Army was not authorized to consider water supply or water quality in its NED considerations, even if Delta levee failures could lead to a degradation or disruption of drinking water supply for millions of people, including disadvantaged communities. The study concluded that the Army had no federal interest in flood management in the Delta.

In our June 2, 2014 comment letter on this project, we encouraged the Army to consider non-traditional risk management options that may be more feasible, and to use system-wide considerations and categories to define risks and benefits for the region. The challenges of flood risk and the housing crisis (limiting the relocation of residents in high-risk flood zones) are compounded by the additional barrier of the benefit cost ratio used to justify Army participation in flood improvement projects. By considering only property replacement costs without considering the density of people at risk from flooding, the Army's process disproportionately supports communities with higher property values, and neglects densely populated disadvantaged communities.

We went on to ask that the Army also consider health and safety threats, as well as economic damages related to interruption of water conveyance; economic damage of extended travel times for major transportation corridors; and risk to life of population. The Council believes that the policy constraints of the PR&G prevented the Army from finding a federal interest in flood management in the Delta, and we see this modernization effort as a positive development and a clear opportunity to address these issues that would advance achievement of the coequal goals for the Delta.

Council Environmental Justice Work

While we work at different levels of government, the Council and the Army have shared interests in land use planning, water infrastructure, floodplain management, and climate resilience. Additionally, we are both in the process of working to improve our engagement with Tribes, incorporate Traditional Knowledge in our

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work, improve outreach and engagement with communities that are often left out of decision-making processes, and advance environmental justice. We would like to offer input to the Army's process by sharing a sample of some insights gained from recent conversations with community members and community-based organizations in the Delta region conducted as part of the Council's current environmental justice work. We urge the Army to address the disproportionate flood risk and climate hazard impacts experienced by environmental justice communities, including Tribes, through improved land use planning, more equitable public investments, and a more meaningful engagement and thorough consultation. To overcome these challenges, community organizations have identified several actions government agencies should take on to rebuild and sustain trust, form new collaborations, and remove common barriers to participation.

We have taken several steps to address [environmental justice \(EJ\) in the Delta Plan](#), including publishing a [Public Participation Plan in 2020](#), creating the [2020 Social Science Task Force](#), increasing engagement with disadvantaged communities through the Council's climate initiative, [Delta Adapts: Creating a Climate Resilient Future](#), and adopting a recommendation in the Council's 2019 [Five-Year Review of the Delta Plan](#) identifying EJ as a priority issue needing additional attention in the Council's work. As a result, in partnership with four community-based organizations that comprise the [Council's EJ Expert Group](#), we have embarked on a year-long EJ initiative that aims to:

- 1) build a network of community leaders and organizations to inform and support the Council's EJ work;
- 2) identify EJ issues within the Sacramento-San Joaquin Delta, the Delta Watershed, and areas that use Delta water; and
- 3) identify options to address those issues.

The work will culminate in an issue paper summarizing the best available science on EJ and identifying policy recommendations for the Council.

To improve equal access and environmental justice, we are working to shift the way that we gather and reflect community and Tribal input. For this work, we have contracted with regional EJ experts for their expertise for a period of one year.

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Additionally, our Delta Science Program is working with several other agencies to expand the existing definition of scientific *subject matter experts*, as the current definition often limits available funding to scientists in academia working on community and Tribal EJ issues. Broadening the definition of *subject matter experts* will better enable government agencies to compensate community experts for the time they dedicate to policy processes, and communicate the value of experiential knowledge.

Delta Environmental Justice Issues

Thus far, with guidance from the EJ Expert Group and in partnership with California Sea Grant, our research team has conducted 23 interviews with a wide range of organizations and individuals working in EJ communities in the Delta. These interviews provide a baseline understanding of key EJ issues, which communities are most impacted by environmental burdens, how EJ issues are affecting different communities, and what solutions they would like to see explored to better address EJ in the Delta. We would like to share the following highlights from these interviews that relate to the themes identified within the Army's proposed modernization efforts.

Flood Risk

Interviewees concerned about flooding spoke about levee investments, flood insurance access and affordability, and land use planning and development that result in certain communities experiencing disproportionate risk and/or inadequate resources to respond to floods. These communities include: lower income communities located closer to levees who are less likely to be able to afford flood insurance and less aware of flood risks, as well as the elderly, people with disabilities, or residents without vehicles that would experience limited mobility during evacuations. Interviewees discussed the combined challenges of flood risk and the housing crisis, noting that residents in high-risk flood zones are often financially unable to relocate.

Interviewees discussed the continued need for public education and awareness campaigns to increase community understanding of flood risk as well as engagement with local governments in land use planning processes to encourage climate-smart planning that considers expected sea level rise and prioritizes safety from potential floods. Interviewees shared that housing development and flood management investments need to be prioritized in low-income and other high-risk communities.

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Climate Change

Interviewees shared that communities likely to experience higher exposure to climate threats include the unhoused communities, low-income communities and renters, and agricultural workers that work outdoors. Additionally, elderly, youth, people with disabilities, immigrants and minority communities face increased vulnerability to climate hazards and have reduced capacity to adapt. Interviewees described political resistance to change as a large barrier to making needed climate change preparedness plans. Interviewees shared that local land use planning processes often neglect to consider anticipated climate impacts such as flooding due to sea level rise, local elected officials are unwilling to take climate action, and utilities are not implementing disaster preparedness models. Interviewees advocated for increased adaptability in planning processes, accounting for climate impacts in land use planning, communicating climate risks to communities, and additional funding and monitoring for climate resilience programs.

Tribal and Indigenous Justice

Tribes have legally protected rights as sovereign nations, yet interviewees discussed how these rights are routinely violated by agencies and private developers who fail to acknowledge and duly respect Tribal sovereignty. Interviewees shared that Indigenous peoples are restricted from many cultural practices, including language, subsistence practices, and ceremonial practices that require access to their ancestral homelands. They discussed the physical and mental health impacts that members of Indigenous communities suffer as a result of these various forms of cultural repression. Interviewees identified a variety of environmental hazards facing Indigenous communities, including water and soil contamination.

Government agencies' failure to provide meaningful consultation, as legally required, compounds the injustices created by environmental hazards and cultural repression. Interviewees shared that consultation is often too late in the decision-making process, sometimes adversarial and disrespectful to Tribal representatives, and/or ineffective as the agency staff assigned to manage the consultation often change or perform multiple other duties. Additionally, input provided by Tribes is often ignored by decision-makers.

Interviewees recommend that agency communication with Tribes should be done through early, sustained, and meaningful consultation that is genuinely responsive

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to Tribal input. Interviewees also recommended reaching out to more than one Tribal contact per tribe and educating agencies about Tribes/Tribal laws; and support current efforts to designate Indian Beneficial Uses to protect culturally significant spaces.

Outreach and Engagement

Suggestions for improved agency engagement with EJ communities came up in almost every interview. Interviewees recommended the following engagement approaches:

- Rebuild trust and recognize the long history of EJ communities being disenfranchised by the government. Meet people where they are, in their space, and on their terms.
- Work through trusted community partners, rely on their expertise to reach community members, and talk about issues in ways that resonate with the community (remove jargon, focus on how issues impact lives *today* not just in the distant future – restorative communication).
- Remove barriers to participation: compensate people for their time, ensure language access and support, support hybrid meetings, provide longer review times and comment periods, provide clear instructions on how to engage on various agency issues/projects, and improve coordination across agencies for community asks.
- Follow through: be clear, honest, and transparent on how input will be used.

General Recommendations for Agencies

Beyond feedback on specific issues, interviewees shared general recommendations for government agencies to advance this work, including but not limited to:

- Be race forward: discuss and acknowledge racism within the agency and hire people of color in leadership roles and to staff environment justice teams.
- Use agency influence over other government entities to advocate for EJ communities.
- Invest in the next generation through school partnerships and workforce and job training.
- Place more value on community-based research, citizen science, and community science.

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Conclusion

Council staff encourage the Army to read the draft issue paper when it is released for public comment in 2023. Staff and EJ Expert Group are planning a community workshop this fall to hear more from community organizations and community members regarding the EJ issues we have identified thus far. Information regarding the workshop will be available on our website at www.deltacouncil.ca.gov. Staff will follow-up with the Army to schedule a meeting to learn more about your planned modernization activities and continue to share what we are learning through the EJ initiative.

To quote one of the interviewees, "We need champions to push for change from within the system." At the Council, we seek to champion this work and we encourage the Army to do the same. We recognize that, as a government agency, we too have work to do to address the numerous EJ issues facing the Delta, but we are actively working to push for the change that is needed to better address environmental injustices throughout the region, and we look forward to working with the Corps in this endeavor.

Thank you for the opportunity to provide comment. Should you have any questions, or to arrange a meeting, please contact Amanda Bohl, Special Assistant for Planning and Science at amanda.bohl@deltacouncil.ca.gov.

Sincerely,

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

Cc:

Moises Moreno-Rivera, California Natural Resources Agency Undersecretary for Environmental Justice

Josephine Axt, Chief of Planning, U.S. Army Corps of Engineers