



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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July 28, 2023

Lori Price

Division of Multi-Benefit Initiatives

California Department of Water Resources

P.O. Box 942836

Sacramento, CA 95825

Delivered via email: littleegbertmbp@water.ca.gov

RE: Comments on Notice of Preparation of a Draft Environmental Impact Report for the Little Egbert Multi-Benefit Project, SCH# 2023060369

Dear Lori Price:

Thank you for the opportunity to review and comment on the Little Egbert Multi-Benefit Project Notice of Preparation (NOP) of an Environmental Impact Report (EIR). The Delta Stewardship Council (Council) recognizes the objective(s) of the Little Egbert Multi-Benefit Project (project), as described in the NOP, to actively manage the transition of the land from agriculture to wetlands and riparian habitat in a manner that maximizes flood benefit and climate resilience and enhances ecosystem processes and recreational opportunities.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, (Wat. Code, § 85000 et seq., Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, §§ 85054, 85300.) The Delta Reform Act further states that the coequal goals are 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. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. 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. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope described in the NOP, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* This project would occur within the boundaries of the Legal Delta.
- (2) Will be carried out, approved, or funded by a State or a local public agency.* This project would be funded and carried out by the Department of Water Resources (DWR), a State agency.
- (3) Is covered by one of the provisions of the Delta Plan.* Delta Plan Regulatory policies that may apply to the project are discussed below.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.* This multi-benefit project would have a significant impact on achievement of the coequal goal to protect,

restore, and enhance the Delta ecosystem and on the implementation of a government-sponsored flood control program.

The State or local agency approving, funding, or carrying out the project that must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the project based on the available information in the NOP. This information is offered to assist DWR to prepare environmental documents that could be used to support a future Certification of Consistency for 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 project proponent of 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 covered actions 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>.

If the project EIR identifies significant impacts that require mitigation, DWR should review Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

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>). Best available science is defined in the Delta Plan as the best scientific information and data for informing management and policy decisions. This policy generally requires that the lead agency clearly document and communicate the process for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making.

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. The ecosystem restoration components of the project would require preparation of an adaptive management plan.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the State Water Resources Control Board’s Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. This policy applies to a proposed action that could significantly affect flow in the Delta. The NOP states that the proposed project would degrade portions of the existing restricted-height (eastern/outboard) levee along Cache Slough... and improve conveyance during flood events and would improve and/or repair existing State Plan of Flood Control levees, and other local infrastructure and flood features to accommodate increased

on-site flows. The NOP also states that potential impacts of the proposed project include changes to hydrology and hydraulics with potential impacts to water quality.

The EIR should analyze and document how the project may impact or alter Delta flows that are subject to the Bay Delta Water Quality Control Plan flow objectives.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration be carried out consistent with Appendix 3 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>). The elevation map included as Figure 4-6 (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

The Little Egbert project area currently includes a mix of intertidal and subtidal elevations, with local variations due to levees and other features. Based on information provided in the NOP, it appears the project would include features at multiple elevations, including upland, tidal, subtidal, and floodplain elevations. The EIR should analyze the elevation of the project site in relation to current water levels and projected sea level rise, and document how the proposed habitat restoration action is appropriate for these elevations.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated. The Little Egbert Multi-Benefit Project is proposed to be located within the Yolo Bypass PHRA.

Based on the location and general project attributes provided in the NOP, it appears the project could improve the opportunity to restore native species at various elevations, including upland, tidal, subtidal, and floodplain habitat. The Biological Resources section of the EIR should acknowledge ER P3 and should

describe within the EIR how the project would avoid or mitigate impacts to the opportunity to restore habitat within this PHRA.

Delta Plan Policy ER P5: 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. Based on information provided in the NOP, the project would result in greater hydraulic connectivity along Cache Slough and the potential to affect special status fish species, special-status terrestrial species, or their habitats.

The Biological Resources section of the EIR should acknowledge ER P5. The EIR should analyze how the project would address both nonnative wildlife species as well as terrestrial and aquatic weeds, including potential effects resulting from greater hydraulic connectivity. The EIR should analyze how the project would avoid or mitigate conditions that would lead to introductions of or improved habitat for nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or substitute equally or more effective measures.

Delta as Place Policy 2: Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing or planned future uses (or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence) when feasible, considering comments from local agencies and the Delta Protection Commission.

The regulatory setting for the Land Use section of the EIR and other relevant resource areas, as applicable (e.g., Agricultural Resources, Biological Resources, Cultural Resources, Land Use and Planning, Recreation), should acknowledge DP

P2. The EIR should describe the project process to avoid or reduce conflicts with existing or planned future uses.

The project would actively manage the transition of the land from agriculture to tidal wetlands, subtitle, and riparian habitat in a manner that maximizes flood benefits and climate resilience and enhances ecosystem processes and recreational opportunities. The Land Use and Planning section of the EIR should acknowledge DP P2 in the regulatory setting and describe analysis of current uses and planned uses, potential conflict, how the project is sited to avoid conflicts, and the feasibility of avoiding or reducing such conflicts.

Risk Reduction Policy 1: Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance, and improvements. The Project proposes to improve and/or repair existing State Plan of Flood Control levees, and other local infrastructure and flood features to accommodate increased on-site flows. The EIR should document the process and describe how DWR has incorporated the prioritization of the state investments in Delta levees and risk reduction.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that, unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions, no encroachment shall be allowed or constructed in the floodplain in certain areas within the legal Delta, including the Yolo Bypass.

The Project proposes to:

- Degrade portions of the existing restricted-height (eastern/outboard) levee along Cache Slough and construct inflow and outflow openings along Cache Slough to connect the floodplain and improve conveyance during flood events.
- Grade and place fill material to construct subtidal swales and habitat berms, to provide rearing habitat for fisheries and establish native habitats.
- Revegetate with native trees, shrubs, and marsh plant species to restore and enhance upland, tidal, subtidal, and floodplain habitat.

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The regulatory setting for the Hazards and/or the Hydrology section(s) of the EIR should acknowledge RR P4. The EIR should analyze the impact of the project on floodplain values and functions, and document how the project is consistent with Policy RR P4.

CEQA REGULATORY SETTING

For each resource section in which a Delta Plan policy is applicable, the EIR's description of the regulatory setting should include the Delta Plan and a reference to the specific applicable regulatory policy or policies.

CLOSING COMMENTS

As DWR proceeds with design, development, and environmental impact analysis of the project, the Council invites DWR to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as the Department of Water Resources proceeds in the next stages of its project and approval processes. Please contact Pat Kelly at 916-902-6577 or patricia.kelly@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