



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

March 13, 2023

Sean Carlson  
Environmental Planning Section  
Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Delivered via email: EP@mwdh2o.com

**RE: Delta Smelt and Native Species Preservation Project**

Dear Sean Carlson,

Thank you for the opportunity to review and comment on the Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) for the Metropolitan Water District of Southern California (Metropolitan) Delta Smelt and Native Species Preservation Project (project). The Delta Stewardship Council (Council) recognizes the objective(s) of the project, as described in the NOI, to consist of the construction of two marsh-pond complexes that would house native fish for a pilot experimental study.

The Council is an independent state 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 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.) 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

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Delta as an evolving place. (Ibid.) The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code § 85300(a).)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. 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, 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

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;*
- (2) Will be carried out, approved, or funded by a State or a local public agency;*
- (3) Is covered by one of the provisions of the Delta Plan; and*
- (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.*

The State or local agency approving, funding, or carrying out the project 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 proposed project based on the available information in the MND. This information is offered to assist the Metropolitan Water District of Southern California to determine if the project is a covered action and to prepare environmental documents that could be used to support a 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 must meet to demonstrate consistency 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 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>.

*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>).

*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 MND states adaptive management operations will be a key element since this is a pilot research project and part of the project, in place of any separate adaptive management plan.

*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. The project is self-contained, and the MND states that “All vehicles and equipment brought on-site shall be decontaminated in accordance with federal and state regulations and guidelines for controlling the spread of noxious weeds, invasive species, and disease.” However, Metropolitan should consider Policy ER P5 and any mitigation that may be warranted 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 land uses when feasible, considering comments from local agencies and the Delta Protection Commission.

**CLOSING COMMENTS**

As Metropolitan proceeds with design and implementation of the project, the Council invites Metropolitan to engage Council staff 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 Metropolitan proceeds in the next stages of its project and approval processes. Please contact Eva Bush at (916) 284 -1619 or [Eva.Bush@deltacouncil.ca.gov](mailto:Eva.Bush@deltacouncil.ca.gov) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", enclosed in a thin black rectangular border.

Jeff Henderson, AICP  
Deputy Executive Office  
Delta Stewardship Council