



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

September 9, 2022

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RE: Comments on Notice of Preparation of an Environmental Impact Report for the Proposed Regulation to Implement Lower San Joaquin River Flows and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta, SCH#2022080184

Dear Chris Carr:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the *Proposed Regulation Implementing Lower San Joaquin River Flows and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan; project)*. The Delta Stewardship Council (Council) recognizes the objective(s) of the project, as described in the NOP, to adopt regulations to allocate responsibility to water rights holders and claimants for implementing the Lower San Joaquin River (LSJR) flow and southern Delta salinity components of the 2018 Bay-Delta Plan. We understand that the State Water Board will evaluate and identify any potentially significant direct or indirect physical

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effects on the environment from implementing the LSJR flows and southern Delta salinity components of the Bay-Delta Plan including:

- assigning responsibility for achieving the LSJR flow and southern Delta salinity objectives;
- requiring the development and implementation of reservoir carryover storage targets, reservoir refill, or other requirements to help ensure that providing flows to meet the flow objectives will not have significant adverse temperature or other impacts on fish and wildlife or, if feasible, on other beneficial uses;
- implementation through a voluntary agreement, if proposed; and
- other related components of the Bay-Delta Plan.

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 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. (Wat. Code, § 85300; see also Cal. Code Reg. Tit. 23, §§ 5001-5015.)

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over actions of State or local public agencies that take place in whole or in part in the Delta and are covered by the provisions of the Delta Plan. (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 covered action. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

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Based on the project location and scope, as provided in the NOP, the proposed project is not, by definition, a covered action (Wat. Code section 85057.5(b) (1).

However, certain actions undertaken by State or local public agencies resulting from the LSJR flows and southern Delta salinity program of implementation may meet the definition of a covered action. This may apply to non-flow measures requiring modification of habitat (e.g., wetland, floodplain and riparian habitat restoration). For such actions, a certification of consistency with the Delta Plan may be required.

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 or more 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 a 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).)

ALIGNMENT WITH THE DELTA PLAN

The Council strongly supports implementation of the 2018 Bay-Delta Plan, and is pleased that the project aligns with the Delta Plan. This alignment is critical, as Delta Plan policy **ER P1** requires certifying agencies to use the Bay-Delta Plan flow objectives to determine consistency of covered actions.

The project would implement Delta Plan recommendation **ER R1**, recently updated as part of the Council's Delta Plan Ecosystem Amendment in June 2022, to maintain

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a regular schedule of reviews of the Bay-Delta Plan to reflect changing conditions due to climate change and other factors. Additionally, the Council encourages the State Water Board to consider newly adopted Delta Plan recommendations in the Proposed Regulation for Implementation that would direct other entities implementing the project to:

- Prioritize unscreened diversions in the Delta for remediation (Delta Plan recommendation **ER RH**);
- Fund and implement projects that improve aquatic habitat conditions and reduce predation risk for juvenile salmon (recommendation **ER RI**);
- Ensure hatcheries develop, or continue to develop, periodically update, and implement scientifically sound Hatchery and Genetic Management Plans (recommendation **ER R8**); and
- Seek coordination among researchers studying juvenile anadromous fish migration pathways and survival upstream of and within the Delta waterways to improve synthesis of results across research efforts and application to adaptive management actions (recommendation **ER R9**).

The Council encourages the State Water Board to consider and contribute to achievement of applicable Delta Plan performance measures. Specifically, we urge the State Water Board to align the Biological Goals for the LSJR with Delta Plan performance measure **PM 4.6**: Doubling Goal for Central Valley Salmon Natural Production by counting natural origin salmon but not hatchery origin salmon toward the doubling goal.

ADAPTIVE MANAGEMENT CONSIDERATIONS

The Council is charged with ensuring that actions by State and local agencies in the Delta are consistent with the Delta Plan, and adequately incorporate the best available science and adaptive management principles. While the project contains adaptive management components, the Council recommends that the State Water Board consider additional ways to strengthen implementation of adaptive management of future water management and ecosystem restoration projects in the proposed regulation.

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The State Water Board should consider expressly requiring an adaptive management plan as a component of an implementing project's mitigation and monitoring plan. The State Water Board may propose this either as a mitigation measure or a component of the implementing regulations. In either case, we recommend that for projects located in the Delta, the required adaptive management plan be consistent with the framework described in Delta Plan Appendix 1 B (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>)

Additionally, the State Water Board should support Delta Plan recommendation **WR R12h(c)** in the project:

- Incorporate adaptive management plans, consistent with the Delta Plan's adaptive management framework and developed in coordination with operators and applicable regulatory agency staff, for modifying water management project operations to meet State Water Resources Control Board flow and water quality requirements, and California Department of Fish and Wildlife conservation and recovery goals, under the following:
 - i. Extended drought conditions (more than three years in duration).
 - ii. Changed climate conditions including sea level rise and changed hydrologic conditions over the anticipated project life.
 - iii. Extreme wet years and flood events.

EXTENDED DROUGHT CONDITIONS

The Council encourages the Water Board to consider impacts of drought and multiyear droughts and avoidance of temporary urgency change petition requests during extended drought conditions. The State Water Board should include consideration of extended drought conditions in the project as described in Delta Plan recommendation **WR R12i(1)(b)**:

- Require water diverters in the Delta and its watershed that are responsible for meeting Bay-Delta Plan requirements, including but not limited to DWR and Reclamation, to develop a process and plan for meeting applicable flow and water quality requirements during extended drought conditions (characterized by multiple, successive dry years) to further the coequal goals

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and minimize reliance on temporary urgency change petitions and related requests.

CLOSING COMMENTS

As the State Water Board proceeds with the project, the Council invites the State Water Board to engage Council staff to discuss potential mitigation measures for adaptive management plans and other project features that would further promote and support the project's important role in implementing the Delta Plan.

Council staff are available to discuss issues outlined in this letter as the State Water Board proceeds in the next stages of its project and approval processes. Please contact Martina.Koller@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