



**DELTA STEWARDSHIP COUNCIL**  
*A California State Agency*

980 NINTH STREET, SUITE 1500  
SACRAMENTO, CALIFORNIA 95814  
[HTTP://DELTACOUNCIL.CA.GOV](http://deltacouncil.ca.gov)  
(916) 445-5511

April 17, 2020

Renee Rodriguez  
California Department of Water Resources  
P.O. Box 942836,  
Sacramento, CA 94236  
Sent via email: [DeltaConveyanceScoping@water.ca.gov](mailto:DeltaConveyanceScoping@water.ca.gov)

**Chair**  
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**RE: Comments on Notice of Preparation of an Environmental Impact Report for the Delta Conveyance Project**

Dear Ms. Rodriguez:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Department of Water Resources (DWR) Delta Conveyance Project (Project). The Delta Stewardship Council (Council) recognizes the stated purpose of the Project is to develop new diversion and conveyance facilities in the Sacramento-San Joaquin Delta (Delta) in order to ensure a reliable water supply south of the Delta. (NOP, p. 2) Stated project objectives include, but are not limited to, addressing anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events, minimizing potential for health and safety impacts from reduced quantity and quality of water deliveries south of the Delta resulting from a major earthquake, protecting the ability of the State Water Project (SWP) (and potentially the Central Valley Project (CVP)) to deliver water under varying hydrologic and regulatory conditions, and providing operational flexibility to improve aquatic conditions in the Delta and better manage impacts of further regulatory conditions on SWP (and potentially CVP) operations. (NOP, p. 2).

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 achieving a more reliable water supply and restoring 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. (Wat. Code, § 85054.)

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*"Coequal goals" means the 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."*

Pursuant to the Delta 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. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as “covered actions.” (Wat. Code, §§ 85022(a) and 85057.5.) The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5002 through 5015) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Wat. Code, §§ 85057.5 and 85225.)

### **Covered Action Determination and Certification of Consistency with the Delta Plan**

Water Code section 85057.5(a) provides a multi-part test to define what activities would be considered covered actions. Based on the Project location and scope described in the NOP, the Project appears to meet the definition of a covered action because it:

1. Will occur in whole or in part within the boundaries of the Legal Delta (Wat. Code, §12220) or Suisun Marsh (Pub. Res. Code, §29101). The new Project alignments (i.e., central tunnel corridor and eastern tunnel corridor shown on NOP Figure 1, p. 4) and facilities (i.e., intakes, tunnel reaches and shafts, forebays, pumping plant, and South Delta conveyance facilities described on NOP p. 3) would be located in the Legal Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. DWR, a State agency, would carry out and approve the Project.
3. Will have a significant impact on the achievement of both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. The Project would construct and operate new conveyance facilities in the Delta, including a single-tunnel facility designed to increase reliability of water supply, and would add to existing SWP infrastructure. The Project proposes to size new north Delta facilities to convey up to 7,500 cfs of water from the Sacramento River to SWP facilities in the south Delta to increase reliability of water supply under varying earthquake, climate change, and regulatory conditions. It would also include mitigation and operational characteristics that would contribute to ecosystem restoration. Therefore, the Project would have a significant impact on achievement of both coequal goals.
4. Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015). Delta Plan regulatory policies that may apply to the Project are discussed below.

In addition, DWR previously submitted a Certification of Consistency with the Delta Plan to the Council for the proposed California WaterFix project (which was subsequently withdrawn). Although the NOP describes a new project, the Project scope and facilities described in the NOP are similar to California WaterFix and will likely implicate a similar range of Delta Plan policies.

### **Comments Regarding Delta Plan Policies and Potential Consistency Certification**

The following information is offered to assist DWR in preparing environmental documents to support a certification of consistency. It describes regulatory Delta Plan policies that may apply to the Project based on the available information in the NOP. The information below may also assist DWR in describing the relationship between the Project and the Delta Plan in the EIR.

The NOP includes a range of flow capacities and describes potential federal participation. These two topics should be further explained in the EIR project description and addressed to the degree possible throughout the EIR.

The Council notes that, on behalf of DWR, the Delta Conveyance Design and Construction Authority (DCDCA) is currently exploring alternative configurations of Project features described in the NOP as part of a public process with a Stakeholder Engagement Committee (SEC). The DCDCA also recently received and published input from an Independent Technical Panel (ITP) regarding, among other things, alternative tunnel alignments that do not correspond to those described in the NOP. Thus, additional details regarding potential Project components and alternatives not described in the NOP are publicly available and being publicly discussed. The Council looks forward to receiving and reviewing the scoping and alternatives report DWR intends to prepare following the NOP review period and reserves the right to offer additional public comments regarding applicable Delta Plan policies considering more detailed alternative alignments and configurations of Project features at that time.

### **General Issues**

As a preliminary matter, in 2018 DWR submitted a Certification of Consistency with the Delta Plan for the California WaterFix project. This certification was appealed by nine parties, who alleged that for various reasons the project was not consistent with one or more Delta Plan policies. Council staff reviewed both the certification and appeals and provided a staff draft determination for the Council's consideration in November 2018.<sup>1</sup>

The staff draft determination describes the certification and appeals and makes staff recommendations regarding whether the certification was supported by substantial evidence in the record with respect to issues raised in the appeals. The staff draft determination stated that the certification was not supported by substantial evidence in the record for multiple Delta Plan policies:

- G P1, subd. (b)(1) (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1)) (“G P1(b)(1)”): Full consistency infeasible, but on the whole the covered action is consistent with the coequal goals

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<sup>1</sup> The staff draft determination is available upon request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

- G P1, subd. (b)(3) (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) (“G P1(b)(3)”): Best Available Science
- WR P1 (Cal. Code Regs., tit. 23, § 5003) (“WR P1”): Reduce Reliance on the Delta through Improved Regional Water Self Reliance
- ER P1 (Cal. Code Regs., tit. 23, § 5005) (“ER P1”): Delta Flow Objectives
- DP P2 (Cal. Code Regs., tit. 23, § 5011) (“DP P2”): Respect Local Land Use When Siting Water or Flood Facilities or Restoration Habitats

Although DWR ultimately withdrew the certification, Council staff recommended that the matter be remanded to DWR for reconsideration to address several issues outlined in the staff draft determination regarding these policies. Because the Project appears similar to California WaterFix in some areas, based on the previous record for California WaterFix, the Council recommends that DWR review the staff draft determination as it relates to the Project and engage with the Council in robust early consultation to ensure that the EIR addresses these matters in detail.

### **General Policy 1: Detailed Finding 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 for a covered action. The following is a subset of Policy G P1 requirements that a project must meet to be considered consistent with the Delta Plan:

#### **Coequal Goals**

Delta Plan Policy **G P1, subsection (b)(1)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1)) allows for covered actions, in a certification of consistency, to include a determination that despite inconsistency with one or more other Delta Plan policies, the covered action is consistent with the Delta Plan because, on the whole, it is consistent with the coequal goals.

In the EIR, DWR should analyze and document potential impacts – whether positive or negative – on the coequal goals. It may be useful to describe the impacts of the Project on the coequal goals to the public in the EIR to establish a record for a future certification of consistency.

#### **Mitigation Measures**

Delta Plan Policy **G P1, subsection (b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2)) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 28, 2018, or substitute mitigation measures that are equally or more effective. Mitigation measures in the Delta Plan's Mitigation Monitoring and Reporting Program (Delta Plan MMRP) are available at:

<https://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the EIR identifies significant impacts that require mitigation, Council staff recommends that DWR review the Delta Plan MMRP and, when feasible, apply the mitigation measures adopted and incorporated into the Delta Plan. Given the scope of the Project, it appears likely that numerous mitigation measures would be relevant.

### **Best Available Science**

Delta Plan Policy **G P1, subsection (b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) states that covered actions must document use of best available science as relevant to the purpose and nature of a project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan (<https://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). Best available science is defined in the Delta Plan, Appendix 1A. Six criteria are included in Appendix 1A: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs, tit. 23, § 5001, subd. (f).) This policy requires that the lead agency clearly document and communicate the processes and information used for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making.

As it develops the EIR, DWR should identify and document use of best available science when analyzing and assessing impacts, including but not limited to the following areas:

- Documentation of consideration of best available science in analyzing the selected project alternatives.
- Best available science on climate change, including sea-level rise projections appropriate to the type of project and planning horizon selected.
- Consideration of best available science related to invasive species and water quality issues such as salinity, nutrients, harmful algal blooms, and contaminants.
- If a range of uncertainty is associated with the scientific data or information used to support design decisions or environmental analysis, DWR should document or communicate the uncertainty as required by the best available science Transparency and Openness criterion.

### **Adaptive Management**

Delta Plan Policy **G P1, subsection (b)(4)** (Cal. Code Regs., § 5002, subd. (b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions, appropriate to the scope of the action, to assure continued implementation of adaptive management. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework

described in Appendix 1B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

Considering the water management components of the Project, an adaptive management plan will be required that addresses Project construction activities, implementation, and ongoing operations. Ecosystem restoration components of the Project would also require DWR to prepare an adaptive management plan.

### **Water Resources Policy 1: Reduce Reliance on the Delta through Improved Regional Water Self-Reliance**

Delta Plan Policy **WR P1** (Cal. Code Regs., tit. 23, § 5003) requires proposed actions that export water from, transfer water through, or use water in the Delta to contribute to reduced reliance on the Delta and improve regional self-reliance.

The Project proposes to increase water supply reliability, among other objectives, by constructing new facilities, including an isolated conveyance facility to be used in conjunction with existing through-Delta conveyance. The Council understands that as proposed, the Project would not alter existing water rights or contractual amounts.

Because the Project proposes to export water from, transfer water through, or use water in the Delta, this policy is applicable. DWR should describe in detail how all water suppliers (defined as both wholesalers and retailers)<sup>2</sup> that would receive water from the Delta as a result of the Project have adequately contributed to reduced reliance on the Delta and improved regional self-reliance consistent with the Delta Plan. DWR should provide information for each water supplier that includes: (1) identifying which water agencies have a current Urban or Agricultural Water Management Plan; (2) the identification, evaluation, and commencement of implementation activities identified in an Urban or Agricultural Water Management Plan that would reduce reliance on the Delta; and (3) the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance.

As for any large project that would trigger this policy, DWR should ensure that the record supporting the certification of consistency for the Project specifically addresses the following items:

- Listing of all urban and agricultural water users that would receive water as a result of the Project.
- Inclusion of quantifiable data documenting reduced reliance, as described by this policy, or a discussion of why this is not feasible.

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<sup>2</sup> Water suppliers are defined in Cal. Code Regs., tit. 23, § 5001.

- Analysis of reduced reliance under different export scenarios, considering the current range in Project capacity described in the NOP (3,000 to 7,500 cfs).

In addition, the Council notes that at this time it is not clear how the CVP may or may not be involved in the Project. To the extent feasible, the EIR should clarify involvement of the Federal Government and clearly define which water suppliers would receive water as a result of the Project. This specificity would help the Council and other stakeholders understand the full range of potential impacts of the Project.

### **Water Resources Policy 2: Transparency in Water Contracting**

Delta Plan Policy **WR P2** (Cal. Code Regs., tit. 23, § 5004) requires the contracting process for water from the SWP and/or the CVP be done in a publicly transparent manner consistent with applicable DWR and Bureau of Reclamation (Reclamation) policies. The Council notes that DWR has proposed extension of the SWP contracts as a separate project. However, the NOP states that the Delta Conveyance Project may involve modifications to one or more of the SWP water supply contracts to incorporate the Project. (NOP, p. 6).

To the extent that the Project includes the types of contract modifications described generally in the NOP, the EIR project description should clearly identify such modifications, and the EIR should assess potential environmental impacts associated with reasonably foreseeable potential contract modifications (as described in the NOP, p. 6). In a future certification of consistency, DWR should describe if and how it proposes to modify SWP water supply contracts and how such contracting was conducted in a transparent, public manner aligned with applicable DWR and Reclamation policies.

### **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 (Water Board) *Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary* (Bay-Delta Plan) flow objectives be used to determine consistency with the Delta Plan for a project that could significantly affect flow in the Delta. This policy applies to the Project because the Project proposes new intakes at two locations along the Sacramento River, which have potential to significantly affect flow.

The EIR should document DWR's analysis of how the Project may impact or alter Delta flows that are subject to the Bay-Delta Plan flow objectives. While these flow objectives are currently described by Decision-1641, the Water Board is undertaking updates to the Bay-Delta Plan. In addition, the ongoing voluntary agreements process could influence flow objectives on a timeline similar to the EIR. As part of a certification of consistency, the relevant flow objectives would be those in effect at the time of certification. Given this, we encourage DWR to consider updates to flow objectives during the EIR development process and analyze those as part of the document. Specifically, the following items related to Delta flow objectives may be relevant to include in the EIR:

- Documentation of ability to meet the requirements of the Bay-Delta Plan, as it exists at time of development of an EIR and at the time of a certification of consistency with the Delta Plan.
- Consideration of a range of operations and climate scenarios when conducting flow and compliance modeling.
- Documentation of model implementation and potential uncertainties.

In addition, the Council strongly encourages DWR to obtain a permit for a Change in Point of Diversion from the Water Board prior to submitting a certification of consistency for the Project to the Council. The Council acknowledges that the schedule for a certification is unknown at this point. However, DWR should include the permit in the record supporting the certification to demonstrate consistency with Delta Plan Policy ER P1.

### **Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations**

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration to be consistent with Appendix 3 (<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), which describes the many ecosystem benefits related to restoring floodplains. The elevation map included as Figure 4-1 in Appendix 4 (<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>) of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

The NOP does not describe any habitat restoration associated with the Project, other than a general statement that other ancillary facilities may be built to support construction of conveyance facilities, including mitigation areas (NOP, p. 3). The EIR project description and/or mitigation measures should identify locations of proposed habitat restoration or mitigation sites, and the EIR should analyze the elevation proposed for each site in relation to current or long-term average water levels and best available science for projected sea level rise, documenting how the proposed restoration project is an appropriate habitat restoration action.

### **Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat**

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that within priority habitat restoration areas (PHRAs) depicted in Appendix 5 (<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated.

Based on the NOP project description and ongoing discussions with the SEC, Project construction activities and operations could have significant adverse impacts on habitat restoration within the Cosumnes/Mokelumne Confluence PHRA. However, the locations of specific facilities that have potential to impact the Cosumnes/Mokelumne Confluence PHRA are not disclosed in the NOP. In the EIR, DWR should disclose whether ancillary facilities will be located within the PHRA and analyze the potential for construction activities and operations

of these facilities to result in significant adverse impacts to the opportunity to restore habitat in the PHRA. Proposed mitigation measures should clearly identify how such potential impacts would be avoided or mitigated.

#### **Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects**

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008) requires levee projects to evaluate and, where feasible, incorporate alternatives to increase floodplains and riparian habitats. As described in ongoing discussions at the SEC, modifications of Delta levees will be required to construct two intakes and potentially for tunnel launch shafts and other ancillary facilities. Therefore, this policy applies to the Project.

ER P4 requires evaluation of setback levees in several areas of the Delta, including the Sacramento River between Freeport and Walnut Grove, Steamboat Slough, and Sutter Slough. The EIR should evaluate the potential to incorporate setback levees at locations within these areas where Delta levees would be modified to accommodate Project or ancillary features, identify alternatives that would expand floodplains and riparian habitats, and describe the feasibility of such alternatives. Council staff encourage DWR to review the January 2016 report "Improving Habitat along Delta Levees".<sup>3</sup> This report recommends habitat designs along levees that may provide greater benefits to target native species (with an emphasis on salmon and riparian birds).

In addition, the ongoing SEC meetings have informed the public about potential Project infrastructure (e.g., intakes, alignments/corridors, a southern forebay) with greater specificity than is included in the NOP. To the degree relevant, such information should be used to develop the EIR project description and should be analyzed in the EIR.

#### **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 the potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a manner that appropriately protects the ecosystem.

The EIR should analyze how the Project would avoid or mitigate introductions or improved habitat conditions for nonnative invasive species, striped bass, or bass. Proposed mitigation and minimization measures should be consistent with, and equally or more effective than, those identified in the Delta Plan MMRP (<https://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>), including Delta Plan Mitigation

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<sup>3</sup> Available upon request by contacting [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov)

Measure 4-1, which requires development and implementation of an invasive species management plan for any project where construction activities or operations could introduce or facilitate establishment of invasive species.

### **Delta as Place Policy 1: Locate New Urban Development Wisely**

Delta Plan Policy DP P1 (Cal. Code Regs., tit. 23, § 5010) requires that new residential, commercial and industrial development be restricted to areas described in Delta Plan appendices 6 and 7.

The NOP does not describe residential, commercial or industrial development as part of the Project, but does describe ancillary features that could be constructed. The EIR should analyze the Project's potential to create both temporary and permanent residential, commercial, and industrial development in applicable areas and describe the resulting potential impacts.

### **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) requires the siting of project improvements/facilities to avoid or reduce conflicts with existing or planned future land uses when feasible. DP P2 may also apply if mitigation habitat is required within the Delta. Independent from state law related to local land use authority and CEQA requirements, DP P2 is a directive to state and local public agencies proposing covered actions, and it specifically requires water management facilities, ecosystem restoration projects, and flood management infrastructure to be sited to avoid or reduce conflicts with existing 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.

DP P2 considers a range of effects that extend beyond CEQA requirements. The EIR should describe the project process to avoid or reduce conflicts with existing or planned future land uses. This is a wide-ranging policy relevant to many resource areas in the Delta. Given the importance of agricultural land use, presence of Legacy towns, and the unique culture and history of the region, DWR should include in the EIR detailed analyses of potential impacts as well as documentation of how existing and planned land uses would be protected, or how potential conflicts with planned land uses would be mitigated, when feasible.

Based on the record for California WaterFix, similarity of the proposed central tunnel alignment, and ongoing discussions with the SEC, the following issues should receive particular focus in the EIR to demonstrate that DWR has avoided or reduced underlying conflicts with existing or planned Delta land uses when feasible:

- Potential conflicts with local land use plans
- Potential conflicts with existing Delta communities

- Potential conflicts with existing Delta parks and recreation uses
- Potential conflicts with existing agricultural lands
- Potential conflicts with community land uses or economic conditions in legacy Delta communities that rely on agriculture
- Potential conflicts with existing land uses due to:
  - Cultural and historical resource impacts
  - Traffic impacts
  - Noise and vibration impacts
  - Visual and aesthetic resource impacts
  - Public health and hazards impacts
  - Wastewater discharge facility impacts

In addition, as part of the previous WaterFix project, DWR committed to “the implementation of a Community Benefits Fund, or its equivalent. This fund would incorporate good neighbor policies to avoid negative impacts on agricultural lands, residents and businesses by providing a mechanism for communication with local government and community members and disburse funds to protect and enhance the Delta as an evolving place.” ([DWR Certification of Consistency for California WaterFix, DP P2, pp. 21-22](#)). The NOP does not describe a similar mechanism as part of the Project. If such a fund is proposed as part of the Project or as mitigation for potentially significant or significant impacts, it should be described in the EIR and in a future certification of consistency. DWR should describe how the fund would be managed and administered, how fund expenditures would reduce significance of Project impacts contributing to conflicts with existing land uses, and how the fund would constitute an enforceable commitment to reduce such impacts.

### **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 discretionary State investments in Delta flood risk management, including levee operation, maintenance and improvements. Policy RR P1 further establishes interim priorities to guide such investments.

The EIR should describe if and how DWR has incorporated the prioritization of state investments in Delta levees and risk reduction to the extent that modifications of Delta levees will be required as part of the Project.

### **Risk Reduction Policy 2: Require Flood Protection for Residential Development in Rural Areas**

Delta Plan Policy **RR P2** (Cal. Code Regs., tit. 23, § 5013) requires that “New residential development of five or more parcels shall be protected through floodproofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect

against a 55-inch rise in sea level at the Golden Gate, unless the development is located within:

- (1) Areas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence;
- (2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island;
- (3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or
- (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in [Appendix 7.](#)"

As described in the NOP, the Project does not appear to involve residential development in rural areas. If such development is proposed, the EIR should analyze and describe such development.

### **Risk Reduction Policy 3: Protect Floodways**

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) restricts encroachment in floodways that are not either a designated floodway or a regulated stream. RR P3 states that "no encroachment shall be allowed or constructed in a floodway unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety".

The EIR should describe how construction activities and operations of Project and ancillary features would not impede the free flow of water in the floodway or jeopardize public safety.

### **Risk Reduction Policy 4: Floodplain Protection**

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain areas specified within the regulation – including the Yolo Bypass, the Cosumnes-Mokelumne River Confluence, and the Lower San Joaquin River Floodplain Bypass area – unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions.

The EIR should describe how construction activities and operations of Project and ancillary features would not result in encroachment on a designated floodplain.

### **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 Reform Act, the Delta Plan and a reference to the specific applicable regulatory policy or policies. The Council encourages DWR to consider including a section in the EIR that specifically describes alignment with Delta Plan policies,

identifying where supporting information can be found throughout the document and supporting appendices.

### **Closing Comments**

As DWR proceeds with design, development, and environmental impact analysis of the Project, we invite you to continue to engage the Council 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. We also encourage DWR to continue to present Project updates at Council meetings.

In addition, information on the Conveyance, Storage, and Operation amendment to the Delta Plan (April 2018) can be found online at <http://deltacouncil.ca.gov/pdf/delta-plan/2018-04-26-amended-chapter-3.pdf>. This amendment updated Delta Plan Chapter 3 to include new recommendations (Recommendations WR R12a through WR R12j) supporting the concept of dual conveyance that are relevant to the Project. We encourage DWR to review these and incorporate them in the Project and its environmental analysis as appropriate.

More information on covered actions, early consultation, and the certification process can be found on the Council website at <https://coveredactions.deltacouncil.ca.gov/>. Council staff are available to discuss issues outlined in this letter as you proceed in the next stages of the Project. Please contact Daniel Constable at (916) 322-9338 ([daniel.constable@deltacouncil.ca.gov](mailto:daniel.constable@deltacouncil.ca.gov)) with any questions.

Sincerely,



Jeff Henderson, AICP  
Deputy Executive Officer  
Delta Stewardship Council

CC: Marcus Yee, Department of Water Resources ([Marcus.Yee@water.ca.gov](mailto:Marcus.Yee@water.ca.gov))  
Carrie Buckman, Department of Water Resources ([Carolyn.Buckman@water.ca.gov](mailto:Carolyn.Buckman@water.ca.gov))  
Katherine Marquez, Department of Water Resources  
([Katherine.Marquez@water.ca.gov](mailto:Katherine.Marquez@water.ca.gov))  
Kathryn Mallon, Delta Conveyance Design and Construction Authority  
([kathrynmallon@dcdca.org](mailto:kathrynmallon@dcdca.org))  
Erik Vink, Delta Protection Commission ([Erik.Vink@delta.ca.gov](mailto:Erik.Vink@delta.ca.gov))  
Campbell Ingram, Sacramento-San Joaquin Delta Conservancy  
([Campbell.Ingram@deltaconservancy.ca.gov](mailto:Campbell.Ingram@deltaconservancy.ca.gov))

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Diane Riddle, State Water Resources Control Board  
(Diane.Riddle@waterboards.ca.gov)  
Jessica Fain, Bay Conservation and Development Commission  
(Jessica.Fain@bcdc.ca.gov)