



980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

A California State Agency

May 11, 2020

Kip Young
Central Valley Flood Protection Board
3310 El Camino Ave, Room 170
Sacramento, CA 95821

Via email: kip.young@water.ca.gov

Chair
Susan Tatayon

Members
Frank C. Damrell, Jr.
Randy Fiorini
Michael Gatto
Maria Mehranian
Oscar Villegas
Daniel Zingale

Executive Officer
Jessica R. Pearson

RE: Comments on Sacramento River Bank Protection Project Phase II Supplemental Authority Final Environmental Impact Statement/Final Environmental Impact Report, SCH# 2009012081

Dear Kip Young:

Thank you for the opportunity to review the Final Environmental Impact Statement/Final Environmental Impact Report (Final EIS/EIR) for the Sacramento River Bank Protection Project Phase II Supplemental Authority (SRBPP, SRBPP Program, or Program). The Delta Stewardship Council (Council) acknowledges the objectives of the Central Valley Flood Protection Board (CVFPB) and U.S. Army Corps of Engineers (USACE) to use this program to arrest or avoid streambank erosion that threatens the integrity of the Sacramento River Flood Control project levee system.

The Council previously submitted comments to the CVFPB on the 2015 Draft EIS/EIR for the SRBPP (see **Attachment 1**). That comment letter explained the Council's regulatory authority under the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act (Wat. Code, section 85000 et seq.)); identified Water Code section 85225 requirements for CVFPB to determine whether the SRBPP is a covered action and, if so, file a Certification of Consistency with the Council before implementing the project; and identified Delta Plan regulatory policies that would be potentially implicated by the project.

The response to comments provided in the Final EIS/EIR states that the USACE and CVFPB will coordinate with the Council to address Delta Plan policies if and when individual erosion sites are identified for repair within the Delta and are determined to be covered actions (Final EIS/EIR, p. 2-84). The Council appreciates this commitment to coordination on individual erosion repair sites. Nevertheless, pursuant to the Delta Reform Act, the CVFPB must determine whether the SRBPP program itself is a covered action, and if so, file a certification of consistency with the Council.

"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."

– CA Water Code §85054

Both the SRBPP program and future individual erosion repair sites represent important opportunities to implement the Delta Plan and advance the coequal goals. The CVFPB should determine if the SRBPP is a covered action, and if so, file a certification of consistency with the Delta Plan if applicable. State or local agencies proposing future erosion repair projects under the SRBPP program must make similar determinations.

Demonstrating that the SRBPP is consistent with the Delta Plan at a program level can support future certifications of consistency for individual erosion repair sites. This letter addresses both current program-level and future project-level Delta Plan policy considerations relative to the SRBPP. As described throughout the letter, policy implications regarding the program are often different than those at the project level. The Council notes the CVFPB's intention to develop 90 percent design plans in advance of finalizing environmental documents associated with individual repair sites (See Step 11 in Appendix B to the Post-Authorization Change Report (PACR)). It is in the CVFPB's interest to ensure that such projects occur within a program framework that has already demonstrated consistency with applicable Delta Plan policies, rather than risk Delta Plan inconsistencies after significant resources have been invested to design individual projects. A certification of consistency with the Delta Plan for the SRBPP Program would be particularly valuable for critical, fast-tracked sites as described in Appendix B to the PACR (p. 9)

Covered Action Determination and Certification of Consistency with the Delta Plan

As explained in the Council's 2015 Draft EIS/EIR comment letter, in addition to future erosion repair projects, the SRBPP program itself appears to meet the definition of a covered action. As defined in Water Code section 85057.5 subdivision (a), 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 Legal Delta (Wat. Code section 12220) or Suisun Marsh (Pub. Resources Code section 29101). The proposed SRBPP would occur in part within the boundaries of the Legal Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. The SRBPP would be approved by the CVFPB, which is a State agency.
3. Will have a significant impact on the achievement of one or 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 SRBPP would have a significant impact on the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta.
4. Is covered by one or more of the regulatory policies contained in the Delta Plan (23 Cal. Code Regs. sections 5003-5015). Delta Plan regulatory policies that may apply to the SRBPP, as well as resulting site selection and implementation within the Delta, are discussed below.

The State or local agency approving, funding, or carrying out the plan, program, or project must make a reasonable, good faith determination, consistent with the Delta Reform Act and Delta Plan regulatory policies, whether the plan, program, and/or project is a covered action and, if so, file a certification of consistency with the Delta Plan with the Council prior to project implementation. (Wat. Code section 85225; 23 Cal. Code Regs. section 5001(j)(3).) Both programs and future projects under those programs may be considered as separate covered actions. As described in Water Code sections 85225.10 through 85225.25, the certification of consistency for either a program or a future project may be appealed to the Council.

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following section describes the Delta Plan regulatory policies that may apply to the SRBPP as a program, as well as regulatory policies that may apply to individual erosion repair projects. This information considers the CVFPB/USACE's responses to Council comments on the Draft EIS/EIR and associated revisions and additions made to the Final EIS/EIR. The Council offers this information to assist the CVFPB to prepare certifications of consistency both for the SRBPP program and for resulting erosion repair projects that are determined by the CVFPB to be covered actions and subject to individual future review by the Council. Where possible, policy discussions in this letter separate these discussions using the labels "SRBPP Program" and "Future Erosion Repair Projects".

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) specifies what must be addressed in a certification of consistency by the state or local public agency for a plan, program, or project that is a covered action. This policy applies only after a proposed action has been determined by the agency to be a covered action because it is covered by one or more of the Delta Plan regulatory policies (23 Cal. Code Regs. sections 5003-5015). Flood control covered actions must meet the following subset of policy requirements under G P1 to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (23 Cal. Code Regs. section 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 28, 2018 (unless the measure(s) 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 that files the certification of consistency finds are equally or more effective. Mitigation measures in the Delta Plan's Mitigation Monitoring and Reporting Program (MMRP, Appendix O to the Delta Plan) are available at <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

SRBPP Program: The SRBPP Final EIS/EIR identifies a variety of significant impacts associated with the preferred alternative. The Council's 2015 comments on the Draft EIS/EIR highlighted four mitigation measures from the Delta Plan MMRP that are relevant to mitigating these impacts: Mitigation Measures 4-1, 4-3, 7-1 and 7-2 (see **Attachment 1**, pp. 3 - 6). Council staff recommends that CVFPB review the Delta Plan MMRP and ensure that the mitigation measures proposed in the Final EIS/EIR are equally or more effective than applicable measures from the Delta Plan MMRP including, but not limited to, the four measures identified above.

Future Erosion Repair Projects: For future individual erosion repair projects, CVFPB should similarly review the Delta Plan MMRP and ensure that any project-specific mitigation measures are equally or more effective than applicable measures from the Delta Plan MMRP. Certifications of consistency for such projects should demonstrate that such measures have been incorporated in the project.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (23 Cal. Code Regs. section 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 regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan: <https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>. 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.

SRBPP Program and Future Erosion Repair Projects: Delta Plan Policy G P1(b)(3) applies both to the SRBPP and to future individual erosion repair projects that are covered actions.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

The Council's 2015 comments on the Draft EIS/EIR highlighted Delta Plan Policy **ER P2** (23 Cal. Code Regs. section 5006), which requires that habitat restoration must be consistent with Appendix 3 of the Delta Plan. Appendix 3 of the Delta Plan describes the many ecosystem benefits related to restoring floodplains and tidal marsh habitat. The elevation map included as Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. Delta Plan combined regulatory appendices are available online at <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>.

SRBPP Program: The response to comments in the Final EIS/EIR states that the SRBPP is primarily a flood control program, not a habitat restoration project. ER P2 covers proposed actions that include habitat restoration. (23 Cal. Code Regs. section 5006(b))

Future Erosion Repair Projects: Individual future erosion repair projects under the SRBPP program may include habitat restoration components. For example, the criteria for evaluating setback levee alternatives includes consideration of whether the “setback levee creates strategic habitat improvement” (Appendix B to PACR, p. 8). Adjacent levees, which the PACR defines as a subcategory of setback levees, may also involve instream and riparian habitat creation and restoration (PACR, p. 12). SRBPP Measures 4a, 4b, and 4c also involve instream and riparian habitat creation and restoration. If future erosion repair projects include habitat restoration components, ER P2 would apply. CVFPB should consider including in project-level environmental review documents information that explains how the project is an appropriate habitat restoration action in light of the site elevation and considering projected sea level rise.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

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

SRBPP Program and Future Erosion Repair Projects: Figure 3 in the PACR shows erosion sites identified during the 2012 inventory, including multiple inventoried sites located within the Yolo Bypass and Cache Slough PHRAs established by the Delta Plan. Figure 3 shows that the Yolo Bypass and Cache Slough areas fall within basins that are either “Not Economically Justified” or “Not Analyzed.” Since the SRBPP prioritizes sites within “Economically-Justified Basins” (PACR, p. 10), it may be unlikely that sites in the Yolo Bypass PHRA or Cache Slough PHRA would be selected for erosion repair. Nevertheless, if CVFPB proposes future individual erosion repair projects within the Yolo Bypass PHRA or Cache Slough PHRA under the SRBPP program, ER P3 would apply. The CVFPB should consider including in project-level environmental documents information that explains how the projects would avoid or mitigate impacts to the opportunity to restore habitat at appropriate elevations.

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

The Council’s 2015 comments on the Draft EIS/EIR highlighted Delta Plan Policy **ER P4** (23 Cal. Code Regs. section 5008), which requires levee projects to, where feasible, increase floodplains and riparian habitats. The policy also requires the evaluation of setback levees in several areas of the Delta, including Sutter and Steamboat Sloughs, Sacramento River between Freeport and Walnut Grove, and urban levee improvement projects in the cities of West Sacramento and Sacramento, as shown in Appendix 8 to the Delta Plan. Delta Plan combined regulatory appendices are available online at <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>.

SRBPP Program: Thank you for incorporating discussion of the criteria that would be considered to determine the feasibility of a setback levee alternative (PACR Appendix B, p. 8).

In a certification of consistency for the SRBPP, the CVFPB should explain and substantiate how the criteria in PACR Appendix B will be applied to evaluate the feasibility of setback levee alternatives for erosion repair sites within the areas identified in Appendix 8 to the Delta Plan.

Future Erosion Repair Projects: For future erosion repair projects resulting from the SRBPP that are determined to be covered actions, the CVFPB should consider including in project-level environmental documents information that explains how the criteria in Appendix B were used to evaluate the feasibility of setback levee alternatives (including any adjacent levee alternatives). Where feasible, the projects must incorporate the setback levee alternatives. Where setback levee alternatives are determined to be infeasible, the CVFPB should consider including in project-level environmental documents information that explains and substantiates how other alternatives that would increase riparian habitats (e.g., SRBPP Measures 4a, 4b, and 4c) were incorporated where feasible.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 Cal. Code Regs. section 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, and bass.

SRBPP Program: The SRBPP Final EIS/EIR references discussion in the Draft EIS/EIR for Impact VEG-6: Potential Introduction or Spread of Invasive Plants as a Result of Program Construction, and associated mitigation measures (VEG-MM-11, VEG-MM-12, VEG-MM-13) in response to the Council's 2015 comments regarding ER P5. As Impact VEG-6 is significant and requires mitigation, the CVFPB should ensure that these mitigation measures are equally or more effective than Delta Plan Mitigation Measure 4-1 (available at <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>). This measure 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. The CVFPB should demonstrate how the potential for new introductions of, or improved habitat conditions for, nonnative invasive vegetation was fully considered and avoided or mitigated in its certification of consistency for the SRBPP program.

The response to comments in the Final EIS/EIR also notes that Chapter 11 of the Draft EIS/EIR discusses how nonnative fish species contribute to the decline in abundance of native species and discusses how long-term changes in nearshore habitat can have adverse effects on all special-status fish species. While Council staff agrees that this discussion is present (see Final EIS/EIR, p. 11-6, 11-12), the CVFPB should consider including more information discussing how the CVFPB fully considered and avoided or mitigated the potential for improved habitat conditions for bass and striped bass. To demonstrate consistency with ER P5, the certification for the SRBPP program must identify evidence in the Final EIS/EIR, or elsewhere in the record, that the CVFPB has fully considered and avoided or mitigated improved habitat conditions for invasive, nonnative fish species.

Future Erosion Repair Projects: ER P5 would also apply to individual erosion repair sites resulting from the SRBPP program that are determined to be covered actions. CVFPB should consider including in project-level environmental documents information that explains and substantiates how the project implemented invasive non-native species mitigation measures, including those required by the SRBPP program, that are equally or more effective than Delta Plan Mitigation Measure 4-1. Such certifications should identify evidence in the record that the state or local public agency has fully considered and avoided or mitigated improved habitat conditions for invasive, nonnative fish species.

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

Delta Plan Policy **DP P2** (23 Cal. Code Regs. section 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting project improvements/facilities to avoid or reduce conflicts with existing or planned future land uses when feasible. 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.

SRBPP Program: The SRBPP Final EIS/EIR does not analyze potential conflicts of each alternative with existing zoning because each city and county within the Sacramento-San Joaquin Valley is required to amend its general plan and zoning ordinances to be consistent with the Central Valley Flood Protection Plan, and adopt goals, policies, and objectives to reduce the risk of flood damage, and thus the SRBPP program is presumed to be consistent with local land use plans (Final EIS/EIR, p. 13-12). The Final EIS/EIR finds that the SRBPP program is consistent with local land use planning policies (Final EIS/EIR, p. 13-17) "despite the potential reduction in activities at individual sites..." (Final EIS/EIR, p. 13-13). Nevertheless, the certification of consistency for the SRBPP program should describe the range of proposed activities relative to the applicable land use designations described or depicted in general plans for each county and city located in whole or in part within the Delta where program activities would occur, and identify steps taken to ensure that flood management infrastructure is sited to avoid or reduce conflicts with both planned and existing land uses.

Future Erosion Repair Projects: The Final EIS/EIR identifies a variety of significant impacts to existing uses that could result from future erosion repair projects, including conversion of important farmland to non-agricultural uses (Effect LA-3), permanent loss of existing park facilities and trails (Effect REC-4), and conflicts with alternative transportation modes (TN-5), among others. Project-level environmental reviews and certifications of consistency for future erosion repair projects proposed under the SRBPP program should document how the specific

proposed flood management infrastructure, as well as rights-of-way, staging areas, borrow disposal areas, and other areas would be sited to avoid or reduce these impacts. The Final EIS/EIR also notes that residences, outbuildings, and agriculture-related structures may need to be relocated to implement bank protection if such structures are located on or adjacent to erosion repair sites (Final EIS/EIR, p. 15-4). Although this impact is found to be less than significant for the preferred alternative at the program level, certifications of consistency for future erosion repair projects should describe how these features would be sited to avoid or reduce these types of conflicts, where feasible.

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

Delta Plan Policy **RR P1** (23 Cal. Code Regs. section 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance and improvements.

SRBPP Program: The certification of consistency for the SRBPP program should describe the interim levee investment priorities set forth in RR P1 and generally describe or categorize how the range of future erosion repair activities supports the investment priorities.

Future Erosion Repair Projects: For individual future erosion repair projects that are determined to be covered actions, certifications of consistency should describe how the proposed action aligns with the interim levee investment priorities set forth in RR P1.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy RR P4 (23 Cal. Code Regs. section 5015) states that no encroachment shall be allowed or constructed in the Yolo Bypass and other specified floodplains, unless it can be demonstrated by appropriate analysis that encroachment will not have a significant adverse impact on floodplain values and functions.

SRBPP Program and Future Erosion Repair Projects: Figure 3 in the PACR shows erosion sites identified during the 2012 inventory, including multiple sites located within the Yolo Bypass. Since the SRBPP prioritizes sites within “Economically-Justified Basins,” it may be unlikely that sites in the Yolo Bypass would be selected for erosion repair. Nevertheless, if the CVFPB proposes erosion repair projects within the Yolo Bypass under the SRBPP program, RR P4 would apply. The CVFPB should consider including in project-level environmental documents, if applicable, more information discussing the project’s impact to floodplain values and functions, and any measures taken to mitigate any significant adverse impact.

Conclusion

The CVFPB should determine if the SRBPP is a covered action, and if so, file a certification of consistency with the Delta Plan if applicable. State or local agencies proposing future erosion repair projects under the SRBPP program must make similar determinations. For the reasons outlined in our February 27, 2015 letter and in the Covered Action Determination and Certification of Consistency with the Delta Plan section of this letter above, the SRBPP program appears to meet the definition of a covered action under Water Code section

Kip Young
Central Valley Flood Protection Board
May 11, 2020
Page 9

85057.5(a). We encourage CVFPB to continue to engage with Council staff prior to developing and submitting a certification of consistency for this project. Please contact Erin Mullin at Erin.Mullin@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

Attachments:

Attachment 1: Council Comment Letter on 2015 Draft EIS/EIR

Cc: Tyler Stalker, U.S. Army Corps of Engineers, Sacramento District
(SacRiverBank@usace.army.mil)



980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

A California State Agency

Chair
Randy Fiorini

February 27, 2015

Mr. Kip Young
Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, California 95821

Members
Aja Brown
Frank C. Damrell, Jr.
Phil Isenberg
Patrick Johnston
Mary Piepho
Susan Tatayon

Executive Officer
Jessica R. Pearson

RE: Sacramento River Bank Protection Project Environmental Impact Statement/Environmental Impact Report, SCH# 2009012081

Dear Mr. Young:

Thank you for the opportunity to comment on the Public Draft Sacramento River Bank Protection Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR). As mentioned in the draft EIS/EIR, the Delta Stewardship Council (Council) has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan. The Delta Plan applies a common sense approach based on the best available science to restore habitat, increase the diversity and efficiency of California's water supplies, enhance floodplains, improve the Delta's levee system and preserve the Delta's agricultural values. In many cases, the Delta Plan calls for balancing competing needs in the Delta, i.e., enhancing floodplain and riparian habitat while maintaining levee integrity, and avoiding or mitigating impacts to agriculture while restoring habitat. Because a portion of the Sacramento River Flood Control Project lies within the Delta and plays an important role in maintaining the integrity of the Delta levee system, it is essential that our agencies coordinate closely on these types of efforts.

Delta Plan Covered Actions and Certification of Consistency

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh. The Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to comply with the set of 14 regulatory policies contained within the Delta Plan.

According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if a project is a "covered action" subject to regulations of the Delta Plan, and if so, certify consistency of the project with Delta Plan policies (Water Code Section 85225). Generally the CEQA lead agency, the Central Valley Flood Protection Board (CVFPB), in the case of the Sacramento River Bank Protection Project, makes the determination if a project is a covered action. If the project is determined to be a covered action, CVFPB will need to complete a certification of consistency that demonstrates that the project is consistent with the regulatory policies of the Delta Plan. (Please refer to our website at <http://deltacouncil.ca.gov/covered->

"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."

– CA Water Code §85054

[actions](#) for more information about the covered action process.) Information and analysis needed to support a consistency certification could be taken directly from the EIS/EIR.

Council staff has reviewed the draft EIS/EIR and have found that several of the proposed Sacramento River bank protection measures are within the Delta and could have significant impacts on biological and agricultural resources. This proposed project may be a “covered action”, and therefore subject to Delta Plan regulations, although that determination ultimately resides with the CVFPB. Consequently, we have identified below issues that we believe you should consider, for the purposes of compliance with both the Delta Reform Act and the California Environmental Quality Act.

Comments on the Draft EIS/EIR

For this letter, our comments are organized by subject area. Within each subject area we have included information on Delta Plan policy (or policies) possibly implicated by this project and the requirements of these policies, as well as specific comments on the draft EIS/EIR, its alternatives and mitigation measures. Where appropriate, we have also provided information on mitigation measures from the Delta Plan’s EIR that should be considered for this project if it is deemed a covered action. We have observed a lack of specificity regarding the location and extent of impacts to biological and agricultural resources and the related mitigation measures, which is typical of programmatic environmental documents. We understand that you will be preparing project-level environmental documents, tiering from this programmatic analysis, and we look forward to providing additional comments when those documents are released.

1. Delta Plan EIR Mitigation Measures

Delta Plan Policy **G P1** (23 CCR Section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with or more effective than those identified in the Delta Plan Environmental Impact Report (EIR). The Delta Plan’s Program EIR provides a list of mitigation measures to address including those to address impacts to biological resources and agricultural resources. (Mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program document, http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.) Our comments below highlight the Delta Plan mitigation measures we think are especially relevant.

2. Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 CCR Section 5002) also states that actions subject to Delta Plan regulations must document use of best available science. Additionally, this policy calls for ecosystem restoration projects to include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement can be satisfied through the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<http://deltacouncil.ca.gov/delta-plan-regulations>), along with documentation of adequate resources to implement the proposed adaptive management process.

The draft EIS/EIR Appendix J identifies how adaptive management will be integrated into the programmatic habitat mitigation strategy. This adaptive management plan identifies that measurable objectives will be identified and that the Interagency Work Group will lay out a process for making decisions in the event that

these measurable targets are not achieved. We applaud the integration of adaptive management into this project and the commitment to identify quantifiable objectives so that both success and failure to reach stated objectives can prompt and inform management decisions. As outlined in the Delta Plan adaptive management framework in Appendix 1B of the Delta Plan regulations, project goals and objectives should be identified upfront as part of the project planning process to guide design and implementation of setback levees and restoration of riparian and nearshore aquatic habitats. These goals and objectives should include components related to both regulatory compliance (i.e., to address specific permit requirements) and target outcomes for ecological functions (e.g., created wetland benches provide improved rearing cover for listed fish) – both of these components are critical for a robust effectiveness evaluation of habitat projects. In addition, an important part of adaptive management is the use of conceptual models to help guide decision-making processes, such as planning and designing the project, as well as monitoring, evaluating and reporting on project performance. Without a conceptual framework to guide understanding and frame hypotheses on how certain management decisions will result in expected outcomes, it will be challenging to make informed management decisions. In the final EIS/EIR or its associated appendices, please include goals and objectives, as well as conceptual models, for the habitat mitigation strategy.

3. Habitat Restoration

Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be consistent with Appendix 3 of the Delta Plan regulations, which is an excerpt from the 2011 Draft Ecosystem Restoration Program Conservation Strategy. Appendix 3 describes the many ecosystem benefits related to restoring floodplains, but provides two notes of caution. First, restoration must incorporate as much natural connection with the river as possible to reduce potential standing of native fish. Second, floodplain restoration activities should include investigation and implementation of Best Management Practices (BMPs) to control methylmercury production and transport because periodic wetting and drying of floodplains makes these areas prone to methylation of mercury. In the final EIS/EIR, please describe how these potential impacts will be avoided or mitigated.

The Delta Plan's EIR Biological Resources Mitigation Measure 4-3 calls for proponents to design projects that avoid impacts that would lead to substantial loss of fish and wildlife habitat. If there will be a loss of habitat for fish and wildlife species from a project, Mitigation Measure 4-3 calls for proponents to replace, restore, or enhance habitats for those species and preserve in-kind habitat. The Preferred Alternative is expected to have major impacts on near-shore aquatic and riparian habitat, by removing established riparian vegetation and instream woody structure and increasing the size of shallow-water substrate through placement of rip-rap. These impacts are often estimated by the EIS/EIR's Standard Assessment Methodology (SAM) to be substantial for work in the northern portion of the Delta along the Sacramento River mainstem (Region 1b in the EIS/EIR), because many of these sites are proposed to undergo either bank protection measures 2, 4a, 4b, 4c, or 5, which involve placement of rock revetment.

Overall, the impacts on fish and wildlife habitat will range from a decrease of shading of shallow aquatic habitat to a loss of riparian trees for terrestrial wildlife. These effects are expected to last potentially for decades post-construction, because while some of the effects will be mitigated through establishment and growth of planted riparian vegetation (e.g., **Mitigation Measure VEG-MM-1**) it will take many years for this vegetation to take hold and redress the initial impacts of riparian vegetation removal (e.g., loss of riparian habitat for terrestrial species and loss of shading of nearshore aquatic habitat for native fish species). We recommend that subsequent project-scale environmental documentation of these proposed levee erosion

control measures analyze in further detail the effects that these long-term alterations in aquatic and terrestrial habitat will have on sensitive, native species.

The EIS/EIR's **Mitigation Measure FISH-MM-2** is intended to help redress the impacts of the levee work to aquatic habitat for fish species through either on-site or off-site mitigation. On-site mitigation measures would consist of placement of in-water woody vegetation structure to provide cover for juvenile fish and constructed wetland and riparian benches; off-site mitigation may involve setback levees, placement of in-water woody vegetation, construction of wetland benches, planting of riparian vegetation, and removal of rock substrates. We believe that it is particularly important for the habitat mitigation strategy to protect and maintain channel margin habitat along important salmonid migratory corridors in the Delta, including the Sacramento River mainstem and its major tributaries of Sutter and Steamboat Sloughs. All four races (i.e., fall-run, late fall-run, winter-run, spring-run) of Central Valley Chinook salmon as well as Central Valley steelhead migrate along the lower Sacramento River in the Delta and channel margin habitat is particularly important rearing habitat and refugia for juvenile salmonids. We recommend that to the maximum extent feasible, any impacts to channel margin habitat along important salmonid migration corridors in the Delta be mitigated on-site; in the event that off-site mitigation is necessary, we recommend that any off-site mitigation occurs in close proximity and along the same waterway as where the impacts would occur (e.g., impacts to habitat along Steamboat Slough should be mitigated along Steamboat Slough) to demonstrate that the mitigation is restoring equivalent, in-kind habitat.

4. Setback Levees

Delta Plan Policy **ER P4** (23 CCR 5008) calls for levee projects to evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. The policy also calls for the evaluation of setback levees of certain areas of the Delta within the Sacramento River watershed including: Sutter and Steamboat Sloughs, Sacramento River between Freeport and Walnut Grove, and urban levee improvement projects in the cities of West Sacramento and Sacramento.

The Sacramento River Bank Protection Project includes actions to conduct erosion control measures on 17 levee segments within the area identified by ER P4 where setback levees must be considered. Of these locations, the Preferred Alternative (4A) calls for a setback levee in only one location, on the right margin of the Sutter Slough at River Mile 24.7. It was not clear to us why this site alone was selected. In the final EIS/EIR, please provide a clear explanation of your methodology for determining whether a setback levee, or other alternative that expands floodplain and riparian habitats, is feasible and appropriate for a given location within the Delta.

5. Invasive Species

Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for avoiding introductions and habitat improvements for invasive nonnative species. This policy states 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 way that appropriately protects the ecosystem." Analysis on this matter should address both nonnative wildlife species (e.g., introduced sport fish species), as well as nonnative vegetation, including both aquatic and terrestrial weeds. Rock revetment is often negatively associated with native fish species like Chinook salmon, but often provides cover for nonnative predators like striped bass. We understand that rock revetment is already in place along many of the levee segments being considered for this project. We also

have identified several areas where the EIS/EIR calls for placement of new rock revetment, through bank protection measures 2, 4a, 4b, 4c, and 5, on areas not already armored (see Table 1 below).

Table 1. Locations of Delta Levees Where New Rock Revetment is Proposed

Water Feature	River Mile	Left or Right Bank
Cache Slough	22.8	Right bank
Sacramento River	21.5	Right bank
Sacramento River	24.8	Left bank
Sacramento River	25.2	Left bank
Sacramento River	56.5	Right bank
Sacramento River	56.7	Right bank

In the final EIS/EIR, please describe how the project will avoid or mitigate impacts associated with new rock revetments, including the creation of habitat conducive to invasive fish predators which could impact listed, native fish.

Delta Plan Biological Resources Mitigation Measure 4-1 includes a requirement that an invasive species management plan shall be developed and implemented for any projects whose construction or operation could lead to introduction or facilitation of invasive species establishment. Based on the concerns we raised above regarding invasive species, we believe that such a plan is necessary and should be developed soon to help guide site-specific levee improvement designs. This plan is to be developed in consultation with Department of Fish and Wildlife (DFW) and local experts. The invasive species management plan is to include the following elements: nonnative species eradication methods, nonnative species management methods, early detection methods, notification requirements, best management practices for preconstruction, construction, and post construction periods, monitoring, remedial actions and report requirements; provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems.

6. Land Use Conflicts

Delta Plan Policy **DP P2** (23 CCR Section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies and the Delta Protection Commission.

Within the Delta, this project proposes levee bank protection work in Solano, Yolo, and Sacramento counties. If agricultural lands are converted, we recommend that you work closely with those counties to ensure that adequate mitigation is provided that will offset potential impacts. Additionally, we recommend that where setback and adjacent levees are proposed in the Delta, the Army Corps and the CVFPB consult with the Delta Protection Commission.

According to the draft EIS/EIR, the proposed project could result in significant and unavoidable impacts to agricultural resources due to the conversion of important farmland. Council staff appreciates the inclusion of **Mitigation Measure LA-MM-1** to offset potential impacts to agricultural resources. This measure states: "Evaluate the Potential for Direct Farmland Conversion at the Project Level and Avoid, Minimize, and Compensate for Loss of Farmland Compensate for unavoidable Important Farmland conversion impacts by:

- Protecting productive off-site agricultural land subject to conversion through the purchase or transfer of its development rights. Agricultural conservation easements shall be acquired at a 1:1 ratio, and the lands on which the easements are acquired shall be maintained in agricultural use.
- Paying any applicable agricultural land mitigation fees, as required by a local government agency with jurisdiction over the project.”

We also recommend adding Delta Plan Mitigation Measures 7-1 and 7-2, which are drawn from the Delta Plan’s Mitigation and Monitoring Reporting Program, to ensure that farmlands are protected to the greatest extent possible:

- “Design proposed projects to minimize, to the greatest extent feasible, the loss of the highest valued agricultural land.
- Redesign project features to minimize fragmenting or isolating farmland. Where a project involves acquiring land or easements, ensure that the remaining non-project area is of a size sufficient to allow viable farming operations. The project proponents shall be responsible for acquiring easements, making lot line adjustments, and merging affected land parcels into units suitable for continued commercial agricultural management.
- Reconnect utilities or infrastructure that serve agricultural uses if these are disturbed by project construction. If a project temporarily or permanently cuts off roadway access or removes utility lines, irrigation features, or other infrastructure, the project proponents shall be responsible for restoring access as necessary to ensure that economically viable farming operations are not interrupted.
- Manage project operations to minimize the introduction of invasive species or weeds that may affect agricultural production on adjacent agricultural land.
- Design proposed projects to minimize, to the greatest extent feasible, conflicts and inconsistencies with land protected by agricultural zoning or a Williamson Act contract and the terms of the applicable zoning/contract.”

7. Risk Reduction

Delta Plan Policy **RR P1** (23 CCR Section 5012) calls for the prioritization of state investments in Delta flood risk management, including levee operation, maintenance and improvements. This policy includes interim priorities categorized as specific goals (e.g., localized flood protection, levee network and ecosystem conservation) to guide budget and funding allocation for levee improvements and to assist the Department of Water Resources and the CVFPB in achieving a balance in funding the various goals. The scope of this project, as described in the draft EIS/EIR, appears to be consistent with several goals contained in Delta Plan Policy RR P1.

8. Inconsistencies with the Delta Plan

The final EIS/EIR should discuss any inconsistencies between the proposed plan and the Delta Plan, as required by 15125(d) of the California Environmental Quality Act Guidelines. Please note that the CEQA guidelines’ Appendix G states that a project that is inconsistent with any applicable land use plan, policy, or regulations may result in a finding of significant impact on biological resources.

Early Consultation

The Council strongly encourages all agencies who propose to approve, fund, or carry out an action in the Delta, as early in the project's development as possible, consult with the Council and ensure the project (whether it is a covered action or not) is consistent with the Delta Plan. If CVFPB staff and the project proponent choose to engage in early consultation, the Council staff will meet with you and offer guidance on determining whether the project meets the definition of a covered action, provided that the ultimate determination in this regard must be made by your agency. Council staff will also work with you and the project proponent to ensure consistency between the project and the Delta Plan's policies and recommendations. We also can help guide you through the certification process.

As stated above, Delta Plan Policy **G P1** requires that restoration projects document use of best available science and include an adaptive management plan when filing a certification of consistency with the Delta Plan. We recommend that adaptive management for this project incorporate a monitoring, evaluation and reporting program that evaluates whether the project is successfully achieving the goals and objectives for the project. Delta Stewardship Council staff, including staff from the Delta Science Program, can provide early consultation to help in your preparation of documentation of use of best available science and adaptive management.

Next Steps

We look forward to continuing to work with your agency and other local, state, and federal agencies on this project as well as on other multi-benefit projects in the Delta. I encourage you to contact You Chen (Tim) Chao at YouChen.Chao@deltacouncil.ca.gov or Daniel Huang at Daniel.Huang@deltacouncil.ca.gov with your questions, comments, or concerns. We would like to work with you to ensure consistency of the Sacramento River Bank Protection Project with the Delta Plan while also avoiding, minimizing, or mitigating potential environmental impacts. We look forward to continued coordination with you.

Sincerely,



Cindy Messer
Deputy Executive Officer
Delta Stewardship Council

CC: Brian Mulvey, U.S. Army Corps of Engineers Sacramento District