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# DELTA STEWARDSHIP COUNCIL

*A California State Agency*

August 21, 2020

**Chair**  
Susan Tatayon

Miles Claret  
California Department of Water Resources  
Division of Flood Management  
3464 El Camino Avenue Room 150  
Sacramento CA 95821

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Sent via email: [PublicCommentARCF16@water.ca.gov](mailto:PublicCommentARCF16@water.ca.gov)

## **RE: Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report for the American River Common Features, Water Resources Development Act 2016, Sacramento River East Levee Contract 2 Project**

Dear Miles Claret:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the Draft Supplemental Environmental Assessment/Environmental Impact Report (Draft Supplemental EA/EIR) for the American River Common Features, Water Resources Development Act 2016, Sacramento River East Levee Contract 2 (Project). The purpose of the Project is to reduce the flood risk associated with through and under-seepage of water from the Sacramento River to the City of Sacramento. The Project proposes to construct approximately 9,540 cumulative feet of levee improvements along the Sacramento River by installing a series of cutoff walls to reduce seepage and improve levee stability.

Most of the levee improvements included in the Project were analyzed in the American River Watershed Common Features General Reevaluation Report (ARCF GRR) Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The Draft Supplemental EA/EIR addresses project modifications and refinements since publication of the ARCF GRR EIS/EIR. The Council previously submitted comments to the Central Valley Flood Protection Board (Flood Board) on the ARCF GRR Draft EIS/EIR (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 the Flood Board to determine whether the Project is a covered action and, if so, submit a certification of consistency to the Council before implementing the Project; and identified Delta Plan regulatory policies that would be potentially implicated by the Project.

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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."*

– CA Water Code §85054

Miles Claret

Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report for the American River Common Features, Water Resources Development Act 2016, Sacramento River East Levee Contract 2 Project

August 21, 2020

Page 2

Council staff appreciated the opportunity to discuss the Project and the covered action process with you and other project partners from the U.S. Army Corps of Engineers and Sacramento Area Flood Control Agency at a July 30, 2020 early consultation meeting for the Project. Early consultation represents a critical step in the process for determination of consistency with the Delta Plan for covered actions; it also provides a state or local public agency the opportunity to discuss possible impacts on and benefits to the coequal goals, the Council's regulatory processes, and the Delta Plan (including adaptive management plans and use of best available science) as they pertain to the Project.

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

As explained in the Council's comment letter on the ARCF GRR Draft EIS/EIR and noted in the Draft Supplemental EA/EIR (page 151), the Project 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 Delta (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). The Project would occur in part within the boundaries of the Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. The Project would be approved by the Flood Board, 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 Project 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 (Cal. Code Regs., tit. 23, §§ 5003-5015). Delta Plan regulatory policies that may apply to the Project are discussed below.

Prior to implementing the Proposed Action, the Flood Board would submit a Certification of Consistency with the Delta Plan to the Council in accordance with section 85225 of the California Water Code. (Draft Supplemental EA/EIR p. 151)

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

The following section describes the Delta Plan regulatory policies that may apply to the Project. The Council offers this information to assist the Flood Board to prepare a certification of consistency for the Project.

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

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a certification of consistency by 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 one or more of the Delta Plan regulatory policies (Cal. Code Regs. tit. 23, §§ 5003-5015) is implicated. The following policy requirements under G P1 may apply to the Project:

### **Mitigation Measures**

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs. tit. 23, § 5002(b)(2)) requires that covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 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>.

The Draft Supplemental EA/EIR identifies significant impacts that require mitigation for visual resources, air quality, vegetation and wildlife, special status species, climate change, cultural resources, geological resources, hazardous wastes and materials, water quality and groundwater resources, noise, recreation, transportation and circulation, and public utilities and service systems. The Flood Board should review Delta Plan Appendix O and ensure that the Final Supplemental EA/EIR includes all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identifies substitute mitigation measures that the agency finds are equally or more effective.

### **Best Available Science**

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs, tit. 23, § 5001(f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

Miles Claret

Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report for the American River Common Features, Water Resources Development Act 2016, Sacramento River East Levee Contract 2 Project

August 21, 2020

Page 4

The Final Supplemental EA/EIR should document the use of best available science, as relevant to the Project.

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

The Council's comments on the Draft ACRF GRR EIS/EIR highlighted Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008), which requires levee projects to increase floodplains and riparian habitats where feasible. The policy also requires the evaluation of setback levees in several areas of the Delta, including urban levee improvement projects in the City of Sacramento. The Flood Board should consider including information in the Final Supplemental EA/EIR to document how the Project evaluated the feasibility of incorporating floodplain and riparian habitats, including setback levees where required, into the design and construction of the Project.

The Flood Board should also consider including information in the Final EA/EIR that explains and substantiates how other alternatives that would increase riparian habitats were evaluated and incorporated, where feasible.

#### **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 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 in a way that appropriately protects the ecosystem. The Flood Board should consider including information on Policy ER P5 in the Vegetation and Wildlife section of the Final Supplemental EA/EIR. That section should analyze how the Project would address both nonnative wildlife species as well as terrestrial and aquatic weeds. It should also analyze how the project would avoid or mitigate conditions that would lead to establishment of nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or a substitute mitigation measure that is equally or more effective.

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

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

Miles Claret

Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report for the American River Common Features, Water Resources Development Act 2016, Sacramento River East Levee Contract 2 Project

August 21, 2020

Page 5

The Draft Supplemental EA/EIR identifies a variety of significant impacts to existing uses that could result from the Project, including temporary impacts on visual character, temporary and short-term recreational opportunities during construction, and vegetation removal. The Flood Board should consider including information in Final Supplemental EA/EIR on 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. In addition, the Flood Board should consider including information on any changes in project design or siting that were made to reduce impacts to existing or planned uses.

We appreciate the modification of ARCF GRR EIR/EIS Mitigation Measure REC-1, Implement Bicycle and Pedestrian Detours, Provide Construction Period Information on Facility Closures, and Coordinate with the City of Sacramento to Repair of Damage to Bicycle Facilities, based on Council guidance to provide clear communication of detours for pedestrians and bicyclists, and to provide information on alternative park and boat launch locations to replace facilities that will be temporarily closed.

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

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance and improvements. Delta Plan Policy RR P1 includes three high-level goals that are to be implemented across three benefit analysis categories. For the Project, Goal 1, *Protect existing urban and adjacent urbanizing areas by providing 200-year flood protection*, is particularly relevant. The Flood Board should consider including information in the Final Supplemental EA/EIR on how the Project meets this and other priorities identified under RR P1.

In addition, as part of the Delta Levees Investment Strategy (DLIS), the Council is currently working to update the investment priorities set forth in RR P1. This process is anticipated to be completed in 2021-2022. In the interim, the priorities described under RR P1 remain in effect.

### **CEQA Regulatory Setting**

For each resource section in which a Delta Plan policy is applicable, the Final Supplemental EA/EIR regulatory setting should describe the Delta Plan and reference specific applicable regulatory policies.

### **Conclusion**

As the Flood Board has determined that the Project is a covered action (Draft Supplemental EA/EIR p. 151), the Flood Board should submit a certification of consistency with the Delta Plan to the Council. We encourage the Flood Board to continue to engage in early consultation with Council staff prior to developing and submitting a certification of consistency for the Project. Please contact Erin Mullin at [Erin.Mullin@deltacouncil.ca.gov](mailto:Erin.Mullin@deltacouncil.ca.gov) with any questions.

Miles Claret

Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report  
for the American River Common Features, Water Resources Development Act 2016,  
Sacramento River East Levee Contract 2 Project

August 21, 2020

Page 6

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