



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

February 22, 2022

Patrick Ervin

C/O Wagner & Bonsignore, Consulting Civil Engineers

2151 River Plaza Drive, Suite 100

Sacramento, CA 95833

Delivered via email: [pwervin@wbecorp.com](mailto:pwervin@wbecorp.com)

**RE: Comments on Notice of Preparation of a Draft Initial Study Mitigated Negative Declaration for the South Mokelumne River Setback Levee Project SCH# 2022010311**

Dear Patrick Ervin:

Thank you for the opportunity to review and comment on the South Mokelumne River Setback Levee Project Notice of Completion (NOC) of a Draft Initial Study Mitigated Negative Declaration (Draft IS/MND). The Delta Stewardship Council (Council) recognizes the objective(s) of the South Mokelumne River Setback Levee Project (project), as described in the NOC, to improve levees on the South Mokelumne River to PL 84-99 standards.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the

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

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.)

### **COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN**

Based on the project location and scope, as provided in the NOC, the proposed project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

*(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* The project is located within the legal Delta.

*(2) Will be carried out, approved, or funded by a State or a local public agency.* The project is being carried out by Reclamation District 348 (RD 348), a local public agency.

*(3) Is covered by one of the provisions of the Delta Plan.* Delta Plan regulatory policies that may apply to the project are discussed below.

*and*

*(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.* This project would have a significant impact on a government-

sponsored flood control program to reduce risks to people, property, and State interests in the Delta.

The State or local agency approving, funding, or carrying out the project that must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to initiating project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

## **COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION**

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the Draft IS/MND. This information is offered to assist RD 348 to prepare environmental documents that could be used to support a Certification of Consistency for the project.

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

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

#### ***Mitigation Measures***

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The Draft IS/MND includes mitigation measures for Air Quality, Biological Resources, Cultural Resources, Geology and Soils, and Hazards and Hazardous Materials. RD 348 should review Appendix O and ensure that all proposed mitigation measures are equally or more effective than applicable

and feasible measures included in Appendix O or identify 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>).

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

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration be carried out consistent with Appendix 3 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>). The elevation map included as Figure 4-6 (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area’s elevation.

Where applicable the project should also consider elevation and sea level rise in establishing its restoration plan. RD 348 should consider analyzing the elevation of the project site in relation to current water levels and projected sea level rise and riverine inflows (based on best available science), and document how proposed habitat restoration actions are appropriate for these elevations.

***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. The policy also requires the evaluation of setback levees in several areas of the Delta, which include the Mokelumne River. If a Certification of Consistency is submitted to the Council, the analysis should document the process describing how options to increase floodplains and riparian habitats were evaluated and how a setback levee was selected as the proposed project.

***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, or bass in a way that appropriately protects the ecosystem. We appreciate that in the Draft IS/MND, RD 348 commits to developing an invasive species management plan that “meets the requirements set forth in Delta Plan Mitigation Measure 4-1” (Draft IS/MND, p. 11). If a Certification of Consistency is prepared, RD 348 should also acknowledge Policy ER P5 and document project components relevant to this policy.

***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.

RD 348 should acknowledge Policy DP P2 in the environmental setting for the Land Use and Planning section of the IS/MND (p. 67 of the draft IS/MND). The IS/MND should describe the project process to avoid or reduce conflicts with existing or planned future land uses.

***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. The project represents a substantial investment in improved levees. As such, RD 348 should document and describe how prioritization of state investments in Delta levees and risk reduction was considered in relation to this project.

## **CLOSING COMMENTS**

As RD 348 proceeds with design, development, and environmental impact analysis of the project, the Council invites RD 348 to engage Council staff 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. As part of the Council, the Delta Science Program's Adaptive Management Liaisons are also available to provide further consultation and guidance regarding appropriate application of best available science.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as RD 348 proceeds in the next stages of its project and approval processes. Please contact Patricia Kelly at 916-445-5511 or [patricia.kelly@deltacouncil.ca.gov](mailto:patricia.kelly@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