



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

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March 25, 2022

Robert Trang

California Department of Water Resources, South Delta Branch

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Sacramento, CA 95814

Delivered via email: [wfrdsb\\_ceqa@water.ca.gov](mailto:wfrdsb_ceqa@water.ca.gov)

**RE: Comments on the Notice of Preparation of an Environmental Impact Report for the West False River Drought Salinity Barrier Project**

Dear Robert Trang:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the West False River Drought Salinity Barrier Project (Project). The Delta Stewardship Council (Council) recognizes the objective of the Project, as described in the NOP, to minimize the impacts of salinity intrusion on the beneficial uses of Delta water during persistent drought conditions.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states

that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

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, called "covered actions." (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 initiating the 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 provided in the NOP, 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 the California Department of Water Resources (DWR), a State 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 the coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem.*

The State or local agency approving, funding, or carrying out the project 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 NOP.

### *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 for a project that is a covered action. If a future Certification of Consistency is prepared for the Project, it must include detailed findings that address each of the following requirements:

#### *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 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>.

When preparing the EIR for this project, DWR should propose mitigation measures for potentially significant impacts that are equally as or more effective than the applicable and feasible measures included in Appendix O.

#### *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>).

To support a future Certification of Consistency, DWR should document and describe how best available science was used in the development of, effectively communicated, fostered an improved understanding, and informed DWR’s Project design and mitigation decisions.

#### *Adaptive Management*

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

At the public scoping meeting on March 9, 2022, DWR stated that the Project need and benefit is to protect beneficial uses of water in the interior Delta by reducing saltwater intrusion, while preserving the use of critically needed reservoir water. The need and benefit imply that the Project is a water management project. If so, Delta Plan policy G P1(b)(4) applies and DWR should prepare an Adaptive Management Plan consistent with the framework described in Delta Plan Appendix 1B to support a future Certification of Consistency.

*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 Bay-Delta Water Quality Control Plan flow objectives to be used to determine consistency with the Delta Plan.

The NOP states the Project objective is to be consistent with the Central Valley Regional Water Quality Control Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan). Basin Plan section 3.1.14.2 *Electrical Conductivity, Total Dissolved Solids, and Chloride-Delta Waters*, refers to the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, which is the State Water Resources Control Board Resolution No. 2006-0098 and amends the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).

In a future Certification of Consistency, DWR should discuss the relationship between the Basin Plan, the Bay-Delta Plan, and the 1999 revised Water Right Decision 1641(D-1641) and which plan or parts from each plan would provide criteria for operations and management of water in the Delta. In addition, DWR should analyze and document how the Project may affect or alter Delta flows subject to the Bay-Delta Water Quality Control Plan and D-1641 for Delta Estuary flow and water quality objectives, given the potential for operational changes to impact listed species and the ability of the SWP to meet flow and water quality objectives under varying hydrologic conditions and water year types.

*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.

Alternating flows through West False River may favor the colonization of invasive aquatic vegetation, such as *Egeria densa* (Brazilian water weed) and/ or water hyacinth, which could infest Delta channels.<sup>1</sup> In the EIR, DWR should analyze and

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<sup>1</sup> Kimmerer, W.; Wilkerson, F.; Downing, B.; Dugdale, R.; Gross, E. S; Kayfetz, K., et al. (2019). Effects of Drought and the Emergency Drought Barrier on the Ecosystem of the California Delta. San Francisco Estuary and Watershed Science, 17(3). <http://dx.doi.org/10.15447/sfews.2019v17iss3art2> Retrieved from <https://escholarship.org/uc/item/0b3731ph>

document how the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass was considered and avoided or mitigated in a way that appropriately protects the ecosystem.

*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 uses or 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 (as defined in Cal. Code Regs., tit. 23 § 5001(p)).

To support a future Certification of Consistency, DWR should analyze and document Project siting considerations, provide a basis for the decision made to locate the Project in the West False River location, describe existing uses or uses described or depicted in city and county general plans, and describe whether there is a conflict with such uses and how DWR avoided or reduced conflicts with existing uses or uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible.. If such considerations were not incorporated into the Project, DWR should provide a basis for why such considerations are not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (Cal. Code Regs., tit. 23, § 5001 (p)).

## CLOSING COMMENTS

As DWR proceeds with development of the Project, the Council invites DWR to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and proposed mitigation measures that would promote consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Please contact Anthony Navasero at 916-445-5511 or [Anthony.Navasero@deltacouncil.ca.gov](mailto:Anthony.Navasero@deltacouncil.ca.gov) with any questions.

Robert Trang – DWR, South Delta Branch  
NOP for the EIR of the West False River Drought Salinity Barrier Project  
March 25, 2022  
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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