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DELTA STEWARDSHIP COUNCIL

A California State Agency

August 21, 2020

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Susan Tatayon

Miles Claret
California Department of Water Resources
Division of Flood Management
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Sacramento CA 95821

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Sent via email to: PublicCommentARCF16@water.ca.gov

RE: Comments on Draft Supplemental Environmental Assessment/Environmental Impact Report for American River Watershed Common Features, Water Resources Development Act of 2016, Sacramento River Erosion Contract 1: River Mile 55.2 Left Bank Protection Project

Dear Mr. Claret:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the American River Watershed Common Features, Water Resources Development Act of 2016 Project, Sacramento River Erosion Contract 1: River Mile 55.2 Left Bank Protection Project (Project) Draft Supplemental Environmental Assessment/Supplemental Environmental Impact Report (Draft Supplemental EA/EIR). The Project proposes to construct approximately 1,150-foot-long bank protection measures along the Sacramento River near the Little Pocket neighborhood. The Project will repair an erosion site, restoring structural stability and ensuring future levee integrity (Draft Supplemental EA/EIR p.9). The Project will also include an ecosystem restoration component in the form of a planted waterside bench. The levee system reduces risk and provides flood protection for the City of Sacramento.

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 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, § 85000 et seq.)); identified Water Code section 85225 requirements for the Flood Board to determine whether the Project is a covered action

"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

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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.

Council staff appreciated the opportunity to discuss this 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 this 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 the Project's possible impacts on and benefits to the coequal goals, the Council's regulatory processes, and implementation of the Delta Plan (including adaptive management plans and use of best available science).

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 96), 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 in Public Resources Code section 21065 that meets all of the following conditions:

1. Will occur in whole or in part within the boundaries of the Delta (Wat. 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, as well as resulting site selection and implementation within the Delta, are discussed below.*

The State or local agency approving, funding, or carrying out a 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, submit a certification of consistency with the Delta Plan to the Council prior to project implementation (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).) As described in Water Code, sections 85225.10 through 85225.25, the certification of consistency 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 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 a 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, and recreation. 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

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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>).

In the Final Supplemental EA/EIS, the Flood Board should include references to scientific papers or reports that support the use of best available science, as relevant, and discuss the design of in-stream woody material and planting benches to provide fish habitat.

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 1) 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/2015-appendix-1b.pdf>); and 2) documentation of adequate resources to implement the proposed adaptive management plan.

Adaptive management may be required for the Project given its ecosystem restoration component of a planted waterside bench (Draft Supplemental EA/EIR p.12). An adaptive management plan consistent with the framework referenced above will be required as part of a certification of consistency with the Delta Plan for the Project. Council staff in the Delta Science Program are available to provide early consultation on adaptive management upon request.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

The Council's comments on the Draft ARCF GRR EIS/EIR highlighted Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006), which requires that habitat restoration must be consistent with Appendix 3 of the Delta Plan (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. The Project includes a habitat restoration component of a planted waterside bench. The Flood Board should include information in the Final Supplemental EA/EIS that explains how the Project is an appropriate habitat restoration action considering the site elevation and projected sea level rise and anticipated changes in inflows.

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

The Council's comments on the Draft ARCF GRR EIS/EIR highlighted Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008), which 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, including urban levee improvement projects in the City of 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>. The Flood Board should consider including information in the Final Supplemental EA/EIR documenting how the Flood Board evaluated the feasibility of incorporating floodplain and riparian habitats into the design and construction of the Project, including consideration of setback levees, where feasible.

The Flood Board should also include information in the Final Supplemental 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.

The Flood Board should consider including information in the Final Supplemental EA/EIR that explains how the Project would implement invasive non-native species mitigation measures, that 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>). The future certification of consistency for the Project should identify evidence in the record that the Flood Board 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** (Cal. Code Regs., tit. 23, § 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 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

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influence when feasible, considering comments from local agencies and the Delta Protection Commission.

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 and temporary and short-term recreational opportunities during construction, and vegetation removal. The Flood Board should consider including in the Final Supplemental EA/EIR information showing how the specific proposed flood management infrastructure, as well as rights-of-way, staging areas, borrow disposal areas, and other facilities supporting the Project would be sited to avoid or reduce these 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 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 how the Project meets the 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 currently 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. 96), 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 with any questions.

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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