



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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December 6, 2021

Greg Fabun, General Manager
West Sacramento Area Flood Control Agency
1110 West Capitol Avenue
West Sacramento, CA 95691

**RE: Comments on Draft Supplemental EA/IS for the Yolo Bypass East
Levee Project, SCH# 201110114**

Dear Greg Fabun:

Thank you for the opportunity to review and comment on the Draft Supplemental Environmental Assessment/Initial Study (EA/IS) for the Yolo Bypass East Levee Project (Project). The supplemental EA/IS addresses project level design changes from the 2015 West Sacramento General Revaluation Report (GRR) Final Environmental Impact Statement/Environmental Impact Report (2015 GRR FEIS/EIR). The 2015 GRR FEIS/EIR (SCH# 2009072055) covered nine levee reaches within West Sacramento, including portions of the Sacramento River, Yolo Bypass, Sacramento Bypass, and the Sacramento Deep Water Ship Channel. According to the EA/IS, the Project proposes to install stability berms, replenish waterside revetment, reconstruct maintenance roads, and improve the levee drainage system of the Yolo Bypass East Levee (YBEL) located in the City of West Sacramento. The proposed Project is the first increment of the larger federal West Sacramento levee improvement project.

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.)

The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions, called "covered actions," of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) State and local agencies that propose to carry out, approve, or fund a qualifying covered action located in whole or in part in the Delta must file a certification of consistency with the Council, prior to initiating the implementation of the covered action, which includes detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, §§ 85057, 85225; Cal. Code Regs., tit.23 5001(j)(1).)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the Project location and scope described in the EA/IS, 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 (Wat. Code § 12220) or Suisun Marsh (Pub. Resources Code, § 29101; Wat. Code § 85057.5(a)(1).) The approximate boundaries of these areas are publicly available on the Open Portal at <https://data.ca.gov/dataset/suisun-march-boundary>, and <https://data.ca.gov/dataset/suisun-march-march-boundary>. *The Project would occur partially within the boundaries of the Delta.*
2. Will be carried out, approved, or funded by a State or a local public agency. (Wat. Code §§ 85057.5(a)(2).) *The Project would be carried*

out by the U.S Army Corps of Engineers and its non-federal partner the West Sacramento Area Flood Control Agency (WSAFCA), a local public agency.

3. Is covered by one or more of the regulatory policies contained in the Delta Plan (Wat. Code § 85057.5(a)(3); Cal. Code Regs., tit. 23, §§ 5003-5015). *Delta Plan regulatory policies that may apply to the Project are discussed below.*
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. (Wat. Code § 85057.5(a)(4).) *This Project would have a significant impact on implementation of a government-sponsored flood control program to reduce risk to people, property, and State interests in the Delta because it proposes improvements to existing levee facilities.*

WSAFCA must determine if the project is a covered action and, if so, file a Certification of Consistency with the Council prior to 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 EA/IS. This information is offered to assist WSAFCA to prepare final environmental documents that could be used to support a Certification of Consistency for the Project. This information may also assist WSAFCA to describe the relationship between the proposed Project and the Delta Plan in the Project's Final EA/IS.

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

proposing a covered action and includes the following requirements which a project must comply with to be considered consistent with the Delta Plan:

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>.

The Draft EA/IS for the proposed Project identifies potentially significant impacts for biological resources, hydrology/water quality, and transportation. The Draft EA/IS proposes numerous avoidance and minimization measures to address these impacts. SJAVCA should ensure that the proposed mitigation measures in the Final EA/IS are equally or more effective than applicable feasible Delta Plan mitigation measures in Delta Plan Appendix O. In particular, as described further in discussion of Delta Plan Policy ER P5 below, if mitigation for invasive species impacts is warranted, Project Mitigation Measure Bio-1 should require preparation of an invasive species management plan that meets the requirements set forth in Delta Plan Mitigation Measure 4-1.

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 “best available science 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

(<http://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>. Six criteria as used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs., tit. 23, Appendix 1A.)

If WSAFCA determines that the project is a covered action, WSAFCA should prepare a Certification of Consistency prior to project implementation that documents the scientific rationale for applying these six criteria to the Project, citing to technical studies and the Final EA/IS. The Council's Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance regarding the use and documentation of best available science pertaining to a future Certification of Consistency.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in Delta Plan Policy ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated.

The Project is proposed to be located within the Yolo Bypass PHRA. The EA/IS does not include discussion regarding the relationship between the project and potential opportunities to restore habitat at appropriate elevations in the PHRA. WSAFCA should acknowledge Policy ER P3 in the Biological Resources section of the Final EA/IS and should describe how WSAFCA would avoid or mitigate any potential impacts to the opportunity to restore habitat within this PHRA.

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, including the use of setback levees, to increase floodplains and riparian habitats. The policy also requires the

evaluation of setback levees in several areas of the Delta, which include the North Forks of the Mokelumne River.

The proposed Project described in the Draft EA/IS consists of structural improvements to the existing Yolo Bypass East Levee to address seepage, erosion and overtopping concerns. A future Certification of Consistency for the Project should describe how the modified design was evaluated and where alternatives and setback levees were considered and determined not to be 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 that have the reasonable probability of introducing or improving habitat conditions for nonnative invasive species 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.

The Draft EA/IS does not address the reasonable probability of introduction or improved habitat conditions for nonnative invasive species, nor describe how the Yolo Bypass East Levee Project would avoid or mitigate conditions that would lead to the introduction of, or improved habitat conditions for nonnative invasive species. The Final EA/IS should specifically discuss how the Project will avoid or mitigate these conditions for both wildlife and terrestrial species and aquatic weeds. In the event that mitigation is warranted, mitigation measures should be consistent with Mitigation Measure 4-1 in Delta Plan Appendix O, which is available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

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

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State investments in Delta flood risk management, including levee operation, maintenance, and improvements.

The proposed Project described in the Draft EA/IS would help avoid adverse flood-related impacts and would contribute to reduced risk in the City of West Sacramento by decreasing potential flood impacts to people and property protected by the impacted levees. A future Certification of Consistency for the proposed Project should describe how the Project is consistent with the priorities and goals for State investment in Delta integrated flood management outlined in RR P1.

CLOSING COMMENTS

As WSAFCA proceeds with design, development, and environmental impact analysis of the project, the Council invites WSAFCA to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would align 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>.

Council staff are available to discuss issues outlined in this letter as the West Sacramento Area Flood Control Agency proceeds in the next stages of its project and approval processes.

Please contact Erin Mullin, Supervising Engineer, at (916) 902-6482 or erin.mullin@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council