



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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April 28, 2022

David J. Rehnstrom, Manager of Water Distribution Planning

East Bay Municipal Utility District

375 Eleventh Street, MS 701

Oakland, CA 94607-4240

Delivered via email: mokelumne.aqueducts.resiliency@ebmud.com

RE: Comments on the Notice of Preparation of a Draft Environmental Impact Report for Mokelumne Aqueducts Resiliency Project SCH# 2022030725

Dear David J. Rehnstrom:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Mokelumne Aqueducts Resiliency Project (Project). The Delta Stewardship Council (Council) understands that the objective of the Project, as described in the NOP, is to improve the resiliency of the existing Mokelumne Aqueducts by replacing them in a proposed underground tunnel across 16.5 miles of the Sacramento-San Joaquin River Delta (Delta).

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 for California and protecting, restoring, and enhancing the Delta ecosystem, 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. (Wat. Code, § 85054.) The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. (Wat. Code, § 85300.)

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 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 East Bay Municipal Utility District (EBMUD), 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.
- (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.* By improving the resiliency of the Mokelumne Aqueduct, this Project would have a significant impact on the coequal goal of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

The State or local agency approving, funding, or carrying out the plan, program, or project must determine if it 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 NOP acknowledges the Delta Plan under the discussion of Potential Environmental Effects by noting the “potential for the Project to conflict with the Delta Plan” (NOP, p. 3)¹. The following section describes the Delta Plan regulatory policies that may apply to the 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 covered action. A future Certification of Consistency prepared by EBMUD for the Project 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, EBMUD should review Appendix O and propose mitigation measures for potentially significant impacts that are

¹ Please note that the Delta Plan was prepared by the Delta Stewardship Council rather than the Delta Protection Commission, as stated in the NOP.

equally or more effective than 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>).

As part of a future Certification of Consistency for the Project, EBMUD should document and describe how best available science was used in the development of, effectively communicated, fostered an improved understanding, and informed 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 1B 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.

The NOP states that the Project purpose is to improve the resiliency of the existing Mokelumne Aqueducts by replacing them in a proposed buried Tunnel within the existing Mokelumne Aqueduct right-of-way across a 16.5-mile section where they cross the Delta. The Mokelumne Aqueduct provides the primary water supply for 1.4 million people in Alameda and Contra Costa Counties. As such, the Project appears to be a water management covered action, and G P1(b)(4) would apply. In a future Certification of Consistency for this Project, EBMUD should prepare and include an adaptive

management plan that is consistent with the framework described in Appendix 1B.

Delta Plan Policy ER P5: 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.

The EIR should analyze how the Project would fully consider and avoid or mitigate the potential for new introductions of or improved habitat conditions for both nonnative wildlife species and terrestrial and aquatic weeds. If 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 substitute equally or more effective measures.

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 requiring that water management facilities, ecosystem restoration, and flood management infrastructure be sited to avoid or reduce conflicts with existing or planned future uses when feasible, considering comments from local agencies and the Delta Protection Commission.

The NOP project description describes construction activities, including use of a tunnel boring machine for a 15-foot diameter tunnel with up to four tunnel shafts with one launch shaft constructed in the City of Stockton and one reception shaft located in East Contra Costa County near the City of Brentwood. The project description also states that excavated material will be temporarily stockpiled at launch sites where the material will be dried out prior to using large trucks to transport excavated material to permanent disposal site(s). The NOP states that the launch shaft at Holt and a reception shaft at Bacon Island Road would be

repurposed as access shafts and would be extended approximately 30-feet above the existing ground surface for access in the event of Delta flooding.

Within the EIR, EBMUD should analyze and describe how the project was sited or incorporates feasible measures to reduce or avoid these and other conflicts with existing uses resulting from the Project's siting. This would enable the EIR to serve as a key part of the record supporting a future Certification of Consistency for the Project. EBMUD should analyze and document the feasibility of incorporating mitigation that would avoid or reduce conflicts with existing uses.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) prohibits the presence or construction of encroachments in floodways that are not designated floodways or regulated streams, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

The NOP states that Mokelumne Aqueducts Nos. 1 and 2 would be decommissioned for the equivalent length of the Project's approximately 16.5 miles of improvements while Mokelumne Aqueduct No. 3 would remain to provide operational flexibility and support during outages. This decommissioning includes removing above-ground sections of the pipelines and abandoning underground sections by filling them with cellular concrete to prevent a potential collapse hazard. In the EIR, EBMUD should analyze and document any potential impacts of these decommissioning activities on hydrology and water quality, including specific consideration of the potential for decommissioning activities to affect the ability for water to flow freely in both designated and non-designated floodways.

CLOSING COMMENTS

As EBMUD proceeds with the development of the Project, the Council invites EBMUD 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,

David J. Rehnstrom – EBMUD
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<https://coveredactions.deltacouncil.ca.gov>. Please contact Anthony Navasero at 916-445-5511 or Anthony.Navasero@deltacouncil.ca.gov with any questions.

Sincerely,

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council