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DELTA STEWARDSHIP COUNCIL

A California State Agency

May 4, 2015

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Ms. Erin Brehmer
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**RE: Draft American River Watershed Common Features General Reevaluation Report
Project Environmental Impact Statement/Environmental Impact Report, SCH
#2005072046**

Dear Ms. Brehmer:

Thank you for the opportunity to comment on the draft American River Watershed Common Features General Reevaluation Report (GRR) Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR), prepared by the U.S. Army Corps of Engineers (USACE). The Delta Stewardship Council (Council) staff is pleased to see that this project is being proposed to improve the regional levee system and its existing conditions to reduce flood risk in the Sacramento area.

The Council has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan. The Delta Plan applies a common sense approach based on the best available science to restore habitat, increase the diversity and efficiency of California's water supplies, enhance floodplains, improve the Delta's levee system, and preserve the Delta's agricultural values. In many cases, the Delta Plan calls for balancing competing needs in the Delta, e.g., protecting and restoring habitat while reducing flood risk. Since part of the proposed GRR project activities lie within the Legal Delta and play an important role in maintaining the integrity of the Delta levee system, it is essential that our agencies continue to coordinate closely on these types of efforts.

Delta Plan Covered Actions and Certification of Consistency

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh. The Council exercises that authority through development and implementation of the Delta

"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

Plan. State and local agencies are required to comply with the set of 14 regulatory policies contained within the Delta Plan.

According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if a project is a "covered action" subject to regulations of the Delta Plan, and if so, certify consistency of the project with Delta Plan policies (Water Code Section 85225). Generally, the California Environmental Quality Act (CEQA) lead agency makes the determination if a project is a covered action, which in the case of this project is the Central Valley Flood Protection Board (CVFPB). If it is determined that the project is a covered action, CVFPB will need to complete a certification of consistency that demonstrates that the project is consistent with the regulatory policies of the Delta Plan. (Please refer to our website at <http://deltacouncil.ca.gov/covered-actions> for more information about the covered action process.) Information and analysis needed to support a consistency certification could be taken directly from the EIS/EIR.

Council staff has reviewed the draft EIS/EIR and has found that several of the proposed risk reduction measures are within the legal Delta and this proposed project may be a "covered action" and, therefore, subject to Delta Plan regulations, although that determination ultimately resides with CVFPB. Consequently, we have identified the issues below that we believe you should consider, for the purposes of compliance with both the Delta Reform Act and CEQA.

Comments on the Draft EIS/EIR

For this letter, our comments are organized by subject area. Within each subject area we have included information on the Delta Plan policy (or policies) possibly implicated by this project and the requirements of these policies, as well as specific comments on the draft EIS/EIR. Where appropriate, we have also provided information on mitigation measures from the Delta Plan's EIR that should be considered for this project if it is deemed a covered action. In a separate but related letter to the USACE on the draft GRR, we provide comments specifically on the process of identifying the federal interest in the project. A copy of this letter will be provided to your agency as well.

Delta Plan EIR Mitigation Measures

Delta Plan Policy **G P1** (23 CCR Section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with or more effective than those identified in the Delta Plan Environmental Impact Report (EIR). The Delta Plan's Program EIR provides a list of mitigation measures to address, including those to address impacts to biological resources and agricultural resources. (Mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program document, http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.) The Delta Plan mitigation measures most relevant to this project are discussed under the relevant subject area headings below.

Risk Reduction

Delta Plan Policy **RR P1** (23 CCR Section 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance and improvements. This policy includes interim priorities categorized as specific goals to guide budget and funding allocation for levee improvements and to assist California Department of Water Resources (DWR) and the CVFPB in achieving a balance in funding the various goals. In consultation with DWR, CVFPB, Delta Protection Commission, and other state and local agencies, the Council is currently updating this investment strategy to better define the State's interests. The updated strategy should incorporate information on proposed projects such as the one described in this draft document.

The draft EIS/EIR states that the purpose of the proposed action under CEQA is to reduce flood risk to the Sacramento area by improving the levees that surround the study area. The draft GRR further states that the objective of the non-federal sponsors, the State of California and Sacramento Area Flood Control Agency (SAFCA), is to meet the requirements of California Senate Bill (SB) 5 and the Central Valley Flood Protection Act to achieve an urban level of protection. The non-federal sponsors' goal is consistent with one of the goals contained in Delta Plan Policy RR P1: to "Protect existing urban and adjacent urbanizing areas by providing 200-year level flood protection."

The Sacramento area, according to the draft EIS/EIR, is one of the most at risk areas for flooding in the United States, and there is a high probability of levee failure when flood waters flow in either the American or Sacramento Rivers, which stress the network of levees protecting the study area. Based on our review of the draft GRR, it is unclear if the proposed project can effectively reduce the flood risk for the region and assist local communities in achieving the urban level of flood protection as required by the State. According to USACE's risk analyses from the draft GRR, the results of the risk analyses for the American River South Reach concluded that the Annual Exceedance Probability (AEP) for the American River South (ARS) Reach as a whole is 1 in 147. These results demonstrate that the flood risk for the ARS region would be reduced with the Tentatively Selected Plan (TSP) in place, but this information is insufficient for concluding that the proposed project can achieve the non-federal sponsors' goal.

In the final EIS/EIR, the results of risk analyses of multiple alternatives should be included and clearly presented according to the USACE standards and State's urban level of flood protection criteria. This information will be essential for assessing consistency with Delta Plan Policy RR P1. Also, the final EIS/EIR should include the potential effects on existing conditions or adjacent upstream and downstream flood control systems. These additional analyses will not only enhance the environmental impact assessments for the proposed alternatives but may also be beneficial to USACE's ongoing Central Valley Integrated Flood Management Study, DWR's 2017 Central Valley Flood Protection Plan update, and the Council's development of the Delta Levees Investment Strategy.

The draft EIS/EIR states that the operation and maintenance (O&M) of the improved levee segments and the modified Sacramento Weir/Bypass are the responsibility of the local maintaining agencies, including the American River Flood Control District, DWR's Maintenance Area 9, and the City of Sacramento. The final EIS/EIR, or subsequent environmental evaluation documents, should include the details of the O&M plan, along with mitigation measures, for each levee improvement site and the modified Sacramento Weir/Bypass with well-defined measurable performance standards. This should be included in addition to the Standard Operation and Maintenance Manual for the Sacramento River Flood Control Project.

Habitat Restoration

The comments regarding habitat restoration pertain to the Sacramento River East Levee work and proposed associated off-site mitigation sites, since these areas are located within the legal Delta. There are two regulatory policies in the Delta Plan related to ecosystem restoration actions. Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be consistent with Appendix 3 of the Delta Plan regulations, which is an excerpt from the 2011 Draft Ecosystem Restoration Program Conservation Strategy. Delta Plan Policy **ER P4** (23 CCR Section 5008) calls for levee projects to evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. The policy also calls for the evaluation of setback levees of certain areas of the Delta, including the urban levees addressed in this EIS/EIR.

The proposed project will involve extensive levee improvement work along the east bank of the Sacramento River and the American River. The TSP includes a suite of erosion protection measures for identified levee segments which include placement of rock fill above and below the low summer/fall waterline, placement of a launchable rock trench, and substantial removal of levee vegetation.

According to the draft EIS/EIR, the Local Maintaining Agency would address vegetation issues under the System Wide Improvement Framework (SWIF) agreement, with the assumption that the USACE would approve a variance for USACE Engineer Technical Letter (ETL) 1110-2-583 Vegetation Free Zone requirements. Even with a USACE approved vegetation variance, the proposed vegetation removal under the TSP could result in the loss of 750 riparian trees along the main stem of the Sacramento River, as well as extensive removal of shaded riverine aquatic habitat associated with placement of rock fill along nine miles of river channel. The impacts to these habitats are expected to have adverse effects on the special status species that depend upon them, including Chinook salmon and Swainson's hawk. CVFPB should work with USACE to obtain a vegetation variance and include the status of the variance application process in the final GRR and associated final EIS/EIR.

As acknowledged in the draft EIR under Impact AG-2, the project proposed in the GRR is expected to have potentially significant impacts on riparian habitat. This would be due to removing established riparian vegetation and shaded riverine aquatic habitat through placement of rock fill and its vegetation management plan to remove trees and shrubs it

considers detrimental to maintaining levee integrity. The Delta Plan's EIR Biological Resources Mitigation Measure 4-3 calls for proponents to design projects that avoid impacts that would lead to substantial loss of fish and wildlife habitat. If there will be a loss of habitat for fish and wildlife species from a project, Mitigation Measure 4-3 calls for proponents to replace, restore, or enhance habitats for those species and preserve in-kind habitat.

Given the tremendous investment by State, federal, and local agencies, as well as nonprofits, to promote recovery of salmonids and other threatened and endangered species that use the Sacramento and American Rivers as migratory corridors, it is essential to make every effort to avoid or minimize impacts to these riparian and channel margin habitat. The benefits to special status species provided by the proposed mitigation measures in the draft EIS/EIR are unclear. We recommend that, to the maximum extent feasible, any impacts to the channel margin habitat along important salmonid migratory corridors should be mitigated on-site. In the event that off-site mitigation is necessary, we also suggest that any off-site mitigation occurs in close proximity and along the same waterway as where the impacts would occur to demonstrate that the mitigation is restoring equivalent, in-kind habitat.

In the final draft EIS/EIR or additional environmental evaluations, please identify and include the details of the mitigation measures with or without the USACE vegetation variance and/or the SWIF in place, and describe how they would address impacts to special status species, such as salmonids and Swainson's hawk. If additional funding is available, and a lower benefit-cost ratio of the project is acceptable to USACE and non-federal sponsors, additional alternatives that offer opportunities to restore and improve shaded riverine aquatic habitat important for native terrestrial and aquatic wildlife should be considered.

Invasive Species

Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for avoiding introductions and habitat improvements for invasive nonnative species. This policy states, "The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem." Analysis on this matter should address both nonnative wildlife species (e.g., introduced sport fish species), as well as nonnative vegetation, including both aquatic and terrestrial weeds. In-water rock fill often provides cover for nonnative predators like striped bass, but is often negatively associated with native fish species like Chinook salmon. In the final EIR, please describe how the project will avoid or mitigate permanent impacts associated with in-water rock fill, including the creation of habitat conducive to invasive fish predators which could impact listed native fish.

Delta Plan Biological Resources Mitigation Measure 4-1 includes a requirement that an invasive species management plan shall be developed and implemented for any projects where construction or operation could lead to introduction or facilitation of invasive species establishment. Based on the concerns raised above regarding invasive species, we believe that such a plan is necessary and should be developed soon to help guide site-specific levee

improvement designs. This plan is to be developed in consultation with Department of Fish and Wildlife (DFW), U.S. Fish and Wildlife Service, National Marine Fisheries Service, and local experts. The invasive species management plan is to include the following elements: nonnative species eradication methods, nonnative species management methods, early detection methods, notification requirements, best management practices for preconstruction, construction, and post construction periods, monitoring, remedial actions and report requirements; and provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems.

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 CCR Section 5002) also states that actions subject to Delta Plan regulations must document use of best available science, as defined by Appendix 1A of the Delta Plan (refer to http://deltacouncil.ca.gov/sites/default/files/documents/files/AppB_Combined_2013.pdf). Additionally, this policy calls for water management and ecosystem restoration projects to include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement can be satisfied through the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (refer to http://deltacouncil.ca.gov/sites/default/files/documents/files/AppB_Combined_2013.pdf), along with documentation of adequate resources to implement the proposed adaptive management process. This policy is most applicable to the habitat restoration planned as mitigation for the environmental impacts of the levee projects.

Based on the draft GRR and the draft EIS/EIR, we understand that no monitoring or adaptive management plans have been developed related to the proposed habitat mitigation and enhancement activities. Prior to implementation of these habitat related actions, USACE, CVFPB, and potential local levee maintaining partners should develop adaptive management plans consistent with the Delta Plan; particularly the Plan's Appendix C. The uncertainty of whether the proposed habitat mitigation and enhancement measures are able to offset the impacts of the project and provide net benefits for native fish and wildlife species highlights the need for an effective adaptive management strategy and associated monitoring framework. Council staff is available to assist you in developing an adaptive management plan as part of early consultation to promote consistency with the Delta Plan. We suggest including documentation of best available science and an adaptive management plan as an appendix to the final EIS/EIR in order to have it available for use in a consistency certification.

Inconsistencies with the Delta Plan

The final EIS/EIR should discuss any inconsistencies between the proposed plan and the Delta Plan, as required by 15125(d) of the CEQA Guidelines. Please note that the CEQA guidelines' Appendix G states that a project that is inconsistent with any applicable land use plan, policy, or regulations may result in a finding of significant impact on biological resources.

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Based on our initial review of the project, we have found potential inconsistencies with Delta Plan Policies **RR P1**, **ER P5**, and **G P1**, as described above.

Early Consultation

The Council strongly encourages all agencies who propose to approve, fund, or carry out an action in the Delta, as early in the project's development as possible, to consult with the Council and ensure the project (whether it is a covered action or not) is consistent with the Delta Plan. If CVFPB staff chooses to engage in early consultation, the Council staff will meet with you and offer guidance on determining whether the project meets the definition of a covered action, provided that the ultimate determination in this regard must be made by your agency. Council staff will also work with you to ensure consistency between the project and the Delta Plan's policies and recommendations. We also can help guide you through the certification process.

As mentioned above, Delta Plan Policy **G P1** requires that water management projects document use of best available science and include an adaptive management plan when filing a certification of consistency with the Delta Plan. We recommend that adaptive management for this project incorporate a monitoring, evaluation and reporting program that evaluates whether the project is successfully achieving the goals and objectives for the project. Delta Stewardship Council staff, including staff from the Delta Science Program, can provide early consultation to help in your preparation of documentation of use of best available science and adaptive management.

Next Steps

We look forward to continuing to work with your agency and other local, state, and federal agencies on this project. I encourage you to contact You Chen (Tim) Chao (916-445-0143) at YouChen.Chao@deltacouncil.ca.gov or Daniel Huang at Daniel.Huang@deltacouncil.ca.gov with your questions, comments, or concerns. We look forward to working with you to ensure consistency of the GRR Project with the Delta Plan while also avoiding, minimizing, or mitigating potential environmental impacts.

Sincerely,



Cindy Messer
Deputy Executive Officer
Delta Stewardship Council

cc: Ms. Anne Baker, U.S. Army Corps of Engineers, Sacramento District