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# DELTA STEWARDSHIP COUNCIL

*A California State Agency*

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August 10, 2015

Mr. Juan Neira  
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**RE: Draft Environmental Impact Report for the Smith Canal Gate Project,  
SCH# 2014062079**

Dear Mr. Neira:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Smith Canal Gate Project, which will install an operable gate structure at the mouth of Smith Canal. We appreciate the assistance from you and your consultant in helping us to gain a better understanding of the scope of this project, background information, and project-related planning and coordination activities. Delta Stewardship Council (Council) staff is pleased to see that this project will reduce flood risk in developed areas adjacent to Smith Canal and make the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) flood insurance requirements optional for residents in the areas protected by the project.

As mentioned in the DEIR, 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, improve the Delta's risk management, 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 the proposed project lies within the Legal Delta and plays a role in reducing flood risk to people and property in the Delta, it is essential that our agencies coordinate closely on these types of efforts.

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*"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

## **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 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, San Joaquin Area Flood Control Agency (SJAFCA), in the case of the Smith Canal Project, makes the determination if a project is a covered action. As mentioned in the DEIR, the project has been preliminarily determined by SJAFCA to be a covered action and SJAFCA will prepare a certification of consistency for the project. Information and analysis needed to support a consistency certification could be taken directly from the Environmental Impact Report (EIR), as appropriate.

Council staff met with SJAFCA representatives on October 27, 2014 for early consultation to discuss the preparation of the certification of consistency for the proposed activity as well as to discuss our comments on the Notice of Preparation for the DEIR for this project. We appreciate your agency’s efforts to achieve consistency of the project with the Delta Plan and we offer our continuing assistance during the covered action process as needed.

For the purposes of compliance with both the Delta Reform Act and CEQA, we offer comments below that you should consider as you finalize the EIR.

## **Regional and Local Regulatory Setting**

The DEIR identifies the San Joaquin 2010 County Wide General Plan (1992) and the 2035 Stockton General Plan (2007) as references for the regional and local regulatory setting for the environmental impact assessment of the project. According to California Government Code (CGC) Section 65302.9, each city and county within the Sacramento–San Joaquin Valley is required to update its general plan in a manner consistent with the Central Valley Flood Protection Plan (CVFPP) within 24 months of July 2, 2013. As you may be aware, San Joaquin County and the City of Stockton are working on mandated amendments to their general plans and zoning ordinances. SJAFCA should coordinate with the city and the county to use the most current regulatory standards for the CEQA analysis and include this information as a part of the final EIR.

The following 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 DEIR. Where appropriate, we have also provided information on mitigation measures from the Delta Plan's EIR that should be considered for this project as SJAFCA finalizes its EIR and develops its certification of consistency with the Delta Plan.

### **Risk Reduction and Agency Coordination**

Delta Plan Policy **RR P1** (23 California Code of Regulations [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 the California Department of Water Resources (DWR) in achieving a balance in funding the various goals. According to SJAFCA staff, part of the construction funding for the Smith Canal Gate Project will be from DWR's Urban Flood Risk Reduction Program (UFRRP). To achieve consistency with the Delta Plan, the State of California's investment in Delta flood risk management (i.e., the State's cost share for the project) must be consistent with Delta Plan Recommendation RR P1. One objective of this project, as described in the DEIR, appears to be 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."

According to the DEIR, the proposed activity will provide the minimum 200-year level of flood protection for the target area. We support SJAFCA's goal of improving flood risk for the developed area. However, it is unclear from the DEIR whether the completion of the proposed project will have a positive or negative cumulative impact to areas upstream and downstream of the project area and how the outcome of this project will ultimately contribute towards the region's 200-year level of flood protection.

It is important to demonstrate the project's ability to provide adequate flood protection for the region as required by state regulation. This information should be aligned with that of the U.S. Army Corps of Engineers' Lower San Joaquin River Feasibility Study (2015) Tentatively Selected Plan (TSP), and this information will help inform important ongoing efforts to update the Central Valley Flood Protection Plan in 2017 as well as for the Council as it updates its Delta levees investment strategy (<http://deltacouncil.ca.gov/delta-levees-investment-strategy>). In addition, as part of the analysis of growth inducing impacts, the DEIR should further describe the potential for any additional development in the project area as a result of the successful completion of the Smith Canal Gate Project. All of the above information should be included and addressed in the final EIR.

### **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 structures, like sheet pilings, can potentially provide shelter for nonnative fish like striped bass that may predate on native listed fish like Chinook salmon and operation of the gates could influence movement of aquatic plant. In the final EIR, please describe how the project will avoid or mitigate these types of impacts.

Delta Plan Biological Resources Mitigation Measure 4-1 includes a requirement that an invasive species management plan be developed and implemented for any projects where construction or operation could lead to introduction or facilitation of invasive species establishment. We appreciate your effort to coordinate with U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and the California Department of Fish and Wildlife (CDFW) to develop the proposed project and its alternatives. However, based on the concerns raised above regarding invasive species, we believe that such an invasive species management plan is necessary and should be developed in consultation with CDFW and local experts.

### **Water Quality Impacts**

The DEIR mentioned that there are potential impacts to water quality during and after the construction of the project. Although the Delta Plan recommendations for water quality are non-regulatory, the Council hopes that the proposed mitigation measures in the final EIR are consistent with the entire framework of the Delta Plan such as Delta Plan Recommendation **WQ R1** which states that water quality in the Delta should be maintained to protect beneficial uses identified in applicable State Water Resources Control Board or regional water quality control board water quality control plans and Delta Plan Recommendation **WQ R2** which states that Delta Plan covered actions should identify any significant impacts to water quality.

### **Visual Resources**

As identified in the DEIR, the gated fixed wall structure near Atherton Cove will cause potential impacts to the visual resources of the adjacent residences. In addition to the proposed mitigation measures, including working with affected stakeholders to determine appropriate sheet pile wall aesthetic treatments and applying aesthetic surface treatments to ancillary project features, SJAFCA should also consider the Delta Plan Visual Resources Mitigation Measure 8-1 which includes using vegetation screening to soften views of structures with landscaping that complements the surrounding landscape.

### **Encourage Recreation**

The Delta Plan recommends protecting and improving existing recreation opportunities while seeking ways of providing new, and better coordinated, opportunities. The Delta region offers diverse recreation experiences, such as fishing, boating, birdwatching, and other nature-based activities. The Delta has a variety of recreational facilities, such as campgrounds, parks, picnic areas, and historic towns and buildings. Delta Plan Recommendation **DP R11** calls for providing new and protecting existing recreational opportunities in the Delta and Delta Plan Recommendation **DP R16** calls for increasing opportunities for recreation on public lands.

Construction-related activities including staging, operation, and maintenance for the gated fixed wall structure will interfere with access to public recreation facilities and disrupt boating activities in the area, mainly in and around the Louis Park parking area. We recommend SJAFCA consider Delta Plan Recreation Mitigation Measure 18-2, which states that if substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreational providers to direct displaced users to under-utilized recreational facilities.

### **Best Available Science and Adaptive Management**

Delta Plan Policy **G P1** (23 CCR Section 5002) states that actions subject to Delta Plan regulations must document use of best available science. Best available science should be consistent with six criteria: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. The detailed criteria can be found in Table 1A-1 in Appendix 1A of the Delta Plan (available at [http://deltacouncil.ca.gov/sites/default/files/documents/files/AppB\\_Combined\\_2013.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/AppB_Combined_2013.pdf)). Best available science should be applied during the development, implementation and monitoring of the project.

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, along with documentation of adequate resources to implement the proposed adaptive management process. We recommend that adaptive management for this project incorporate a monitoring, evaluation and reporting program that evaluates whether the project is successfully achieving its goals and objectives and whether the proposed mitigation measures achieve their purpose of preventing and redressing impacts to water quality, vegetation, and fish and wildlife.

Council staff, including staff from the Delta Science Program, can provide additional consultation to help in your preparation of documentation of use of best available science and adaptive management. We also suggest including documentation of 1) where and how best available science was applied in this project and 2) an adaptive management plan appropriate

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to the scope of the action, as appendices to the final EIR in order to have it available for use in a consistency certification.

### **Delta Plan EIR Mitigation Measures**

Delta Plan Policy **G P1** (23 CCR Section 5002) also 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 EIR (These mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program document available at [http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a\\_attach%202.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf)).

### **Inconsistencies with the Delta Plan**

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

### **Next Steps**

We look forward to continuing to work with your agency and other local, state, and federal agencies on the development of this project and providing assistance to SJAFCA in filing a Delta Plan consistency determination. I encourage you to contact You Chen (Tim) Chao at [YouChen.Chao@deltacouncil.ca.gov](mailto:YouChen.Chao@deltacouncil.ca.gov) or Daniel Huang at [Daniel.Huang@deltacouncil.ca.gov](mailto:Daniel.Huang@deltacouncil.ca.gov) with your questions, comments, or concerns. We look forward to working with you to ensure consistency of the Smith Canal Gate Project with the Delta Plan while also avoiding, minimizing, or mitigating potential environmental impacts.

Sincerely,



Cindy Messer  
Deputy Executive Officer  
Delta Stewardship Council

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