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# DELTA STEWARDSHIP COUNCIL

*A California State Agency*

December 2, 2015

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## **RE: Comments on the Draft Delta Levee Maintenance Subventions Program Guidelines**

Dear Ms. Lobato:

Thank you for the opportunity to comment on the Draft Delta Levee Maintenance Subventions Program (Subventions Program) Guidelines. I appreciated the opportunity to meet with you and your colleagues on October 27, 2015 to discuss the details of the draft guidelines. We are pleased to see additional language within the current draft guidelines that elevates the importance of the Subventions Program being consistent with the Delta Plan as required by Water Code section 12986(c), as well as the net habitat improvement mandates of Water Code section 12987.

Through the Delta Reform Act, the Delta Stewardship Council (Council) was granted specific regulatory and appellate authority over certain activities that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as "covered actions (Water Code section 85057.5)." The Council exercises that authority through development and implementation of the Delta Plan. The Delta Plan applies a common sense approach based on the best available science to achieve the coequal goals of protecting and enhancing the Delta ecosystem and providing for a more reliable water supply for California, while improving the Delta's risk management and preserving the region's unique cultural heritage. State and local agencies are required to be consistent with the 14 regulatory policies of the Delta Plan when carrying out, approving, or funding a "covered action." The Delta Reform Act also established a certification process for such covered actions to demonstrate their compliance with the Delta Plan (Water Code Section 85022).

Rehabilitation activities funded under the Subventions Program include substantially improving levees to meet the Hazard Mitigation Plan (HMP) configuration, the Public

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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."*

Law 84-99 (PL 84-99) levee standards, or the Bulletin 192-82 levee standards, as well as providing for fish and wildlife habitat protective measures. Such activities may have significant impacts (positive or negative) on the achievement of the State's coequal goals for the Delta or implementation of a government-sponsored flood control program, and as such may be considered "covered actions" subject to Delta Plan regulations. We would like to offer our assistance to your agency and eligible local agencies in determining whether the proposed activity meets the statutory definition of a covered action and, as such, would require a certification of consistency.

The following includes additional comments and recommendations for the draft guidelines for your consideration:

### **Mandates of the Delta Plan Consistency**

Under the heading "Article 4 - Reimbursement Provisions" of the draft guidelines, it states that payments through the Subventions Program are for maintenance and rehabilitation activities that reflect the priorities of, and are consistent with, the Delta Plan (Water Code section 12986(c)). The same information should also be mentioned under "Section 2.1 - Eligibility, Submission, and Approval of Plans" to ensure local agencies are aware that their proposed activities need to be consistent with the Delta Plan if they are to be eligible for Subventions Program funding.

In addition, we encourage the California Department of Water Resources (DWR) to include the following language, where appropriate, as a reminder for the lead agency carrying out the project:

*"Note to CEQA Lead Agencies regarding consistency with Delta Plan*

*If the proposed project will occur in whole or part in the Delta, you should determine if it meets the definition of a "covered action" under Water Code Section 85057.5 and 23 California Code of Regulations Section 5001(j). If the project is a covered action, prior to commencing implementation, you must file with the Delta Stewardship Council a certification demonstrating consistency with the regulatory policies of the Delta Plan. (For additional information regarding the Certificate of Consistency and the Covered Action process, please visit the Delta Stewardship Council's website: <http://deltacouncil.ca.gov/covered-actions>).*"

### **Delta Levees Investment Strategy**

The Delta Reform Act of 2009 called on the Council to lead a multi-agency effort, in consultation with the Central Valley Flood Protection Board, to establish and adopt, as a part of the Delta Plan, priorities for State investments in levee operation, maintenance and improvement for both project and non-project levees in the Delta (Water Code section 85306). Currently, the Delta Plan includes the interim priorities for State investment in Delta levees (Delta Plan Policy RR P1) and the Council now is engaged in

updating the Delta Plan's priorities for these Delta levee investments as recommended by the Delta Plan (Delta Plan Recommendation RR R4). Council staff is working closely with DWR staff and other agencies in developing the Delta Levees Investment Strategy (DLIS) and the outcomes of the DLIS may affect future funding priorities for the Subventions Program. Information about the DLIS should be included in the "Program Overview" section of the guidelines.

Delta Plan Policy RR P1 (23 California Code of Regulations [CCR] section 5012) states that prior to the completion and adoption of the updated priorities developed pursuant to Water Code section 85306 (i.e., the DLIS), the nine interim priorities listed in the Delta Plan are to guide discretionary State investments in Delta flood risk management. DWR must balance achievement of those nine priorities through the existing programs (e.g. the Subventions Program and the Delta Levees Special Projects Program). Therefore, the Subventions Program guidelines should clearly state the roles and responsibilities of DWR through the Subventions Program, and include records of DWR's current and past funding decisions as supporting documentation. This information will assist local agencies in determining consistency with the Delta Plan, if the proposed project is a covered action.

### **Opportunities for Improving Delta Knowledge and Transparency**

There are various plans and reports that the Subventions Program guidelines require that local agencies submit as part of their application package for different phases. These documents contain valuable and updated information (e.g., levee geometry, geotechnical evaluation, and change of habitat areas) for agencies and local interests to understand the current condition of the Delta, and can be further utilized for developing future projects and studies. DWR should consider creating a publicly accessible database, utilizing existing programs (e.g., Delta Knowledge Improvement Program), to store, maintain, and access this information for interested groups.

According to the draft guidelines, possible funding sources of the Subventions Program may come from Proposition 1E, Proposition 84, and Proposition 1 bond funds. To facilitate transparency of how the State spends limited bond funds, we encourage DWR to regularly release expenditure information and the status for each working agreement in progress. This action will not only help answer questions from interest groups, but also strengthen the credibility of government sponsored flood control programs.

### **Mitigation Measures**

The Subventions Program is mandated to ensure that levee projects funded through this program will result in no net long-term loss of riparian, fisheries, and wildlife habitat (Water Code sections 12314(d) and 12987(c)). Given this principle, we applaud your effort to emphasize that the estimation of habitat loss needs to be accurate and known

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in advance for mitigation purposes to avoid any unexpected loss of habitats from a levee project.

As you may know, Council staff recently released a public draft of the *Levee-Related Habitat Review* (LRHR) which includes recommendations regarding mitigation of levee projects impacts on native species and their habitat. The latest draft of the LRHR is available at <http://bit.ly/PublicDraftLRHR>. The LRHR recommends that mitigation of impacts to channel margin habitat should be mitigated on-site to the fullest extent possible to ensure in-kind mitigation. In the event that off-site mitigation is necessary, we recommend that any off-site mitigation occurs in close proximity and along the same waterway where impacts would occur (e.g., impacts to habitat along Steamboat Slough should be mitigated along Steamboat Slough). Additionally, the LRHR calls for mitigation of projects to not be considered independently of one another, but viewed within a landscape context (e.g., promote linking of riparian habitats to promote contiguous migration corridors). We also recommend that you refer to the Delta Plan Program EIR's mitigation measures pertaining to biological resources (See Mitigation Measures 4-1 through 4-5 in the Delta Plan's Mitigation and Monitoring Reporting Program available at <http://bit.ly/DeltaPlanMMRP>).

We hope DWR staff will work with CDFW staff to implement these mitigation principles to ensure that mitigation for Subventions Program projects achieves the Legislature's no net long-term habitat loss mandate and the State's coequal goal of protecting, restoring, and enhancing the Delta ecosystem.

### **Final Remarks**

Council staff welcomes any opportunities to coordinate with DWR staff during the process of updating the guidelines of the Subventions Program as well as on other activities that may affect the Delta. If you have questions or would like to discuss the comments presented here, please feel free to contact me or my staff, 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).

Sincerely,



Cindy Messer  
Deputy Executive Officer  
Delta Stewardship Council

cc: Ms. Leslie Gallagher, Central Valley Flood Protection Board