



980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

A California State Agency

April 14, 2016

Michele Ng, P.E.
Department of Water Resources
3464 El Camino Avenue, Room 200
Sacramento, CA 95821
SPEIR_2017_Comments@water.ca.gov

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Randy Fiorini

Members
Aja Brown
Frank C. Damrell, Jr.
Patrick Johnston
Mary Piepho
Susan Tatayon

Executive Officer
Jessica R. Pearson

RE: Comments on the Notice of Preparation for the 2017 Central Valley Flood Protection Plan Update Supplemental Program Environmental Impact Report, SCH# 2010102044

Dear Ms. Ng:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the Supplemental Program Environmental Impact Report (SPEIR) for the 2017 Central Valley Flood Protection Plan (CVFPP) Update. The Department of Water Resources (DWR) is preparing this update to the existing 2012 CVFPP in compliance with the legislative mandate to update this Flood Protection Plan every 5 years. The update will incorporate the Central Valley Flood System Conservation Strategy (Conservation Strategy) as well as integrate outputs from Basin-Wide Feasibility Studies (BWFS) and Regional Flood Management Plans (RFMPs).

As you may know, the Delta Stewardship Council (Council) provided comments last year to Stacy Cepello at DWR regarding the draft Conservation Strategy (our comment letter is available on our website at http://deltacouncil.ca.gov/sites/default/files/2015/09/ConservationStrategy_DSCcomments_091415.pdf). Council staff was pleased with the progress that DWR staff had made in developing a draft Conservation Strategy for the CVFPP that was guided by best available science. We provided a few recommendations for DWR staff to consider, particularly with regards to refinement of the adaptive management plan, so we also look forward to seeing the revised Conservation Strategy when it is publically released.

Delta Plan Consistency

The Council has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan. The Delta Plan seeks to achieve the coequal goals of protecting and enhancing the Delta ecosystem and providing for a more reliable water supply for California, in a manner that protects and enhances the Delta as an evolving place. The 2012 CVFPP

"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

recognized the role of the Council and referenced the then 2012 interim draft Delta Plan. The Council has since then unanimously adopted the Delta Plan and its 14 regulatory policies went into effect on September 2013. State and local agencies are required to comply with the Council's regulations if their proposed activity is determined to be a "covered action" under the Delta Plan, which includes plans, programs, or projects (as defined by Public Resources Code Section 21065) that would occur, in whole or in part, within the Delta or Suisun Marsh. It is therefore likely that the 2017 CVFPP Update would be considered a "covered action". Additionally, many of the individual flood system improvement projects analyzed programmatically by the CVFPP SPEIR could also be "covered actions" and would also need to be designed and developed consistent with the Delta Plan. In any case, the Council, in its coordination role, encourages consistency of all relevant programs and projects with the Delta Plan, whether or not they are covered actions.

Analysis of Consistency with Delta Plan in SPEIR

Council staff requests that the Delta Plan, including its policies and recommendations, be acknowledged in the SPEIR's description of the regulatory setting for each applicable resource section. The SPEIR should discuss any inconsistencies between the proposed plan and the Delta Plan, as required by 15125(d) of the California Environmental Quality Act (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.

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 the criteria listed in the table in Appendix 1A of the Delta Plan regulations (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>), including relevance, inclusiveness, objectivity, transparency and openness, timeliness and peer review. We applaud DWR for using these criteria to develop the draft CVFPB Conservation Strategy, and expect a similar effort for the final version of the Conservation Strategy that is incorporated into the 2017 CVFPP Update.

Additionally, Delta Plan Policy **G P1** calls for ecosystem restoration projects to include adequate provisions for 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 regulations (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201b.pdf>), along with documentation of adequate resources to implement the proposed adaptive management process.

Staff from the Delta Science Program can provide consultation to assist in preparation of documentation of use of best available science and adaptive management. Please contact

Darcy Austin (darcy.austin@deltacouncil.ca.gov) of the Delta Science Program to arrange those discussions.

Habitat Restoration

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. Appendix 3 describes the many ecosystem benefits related to restoring floodplains; however it also cautions that such restoration should include investigation and implementation of Best Management Practices (BMPs) to control methylmercury production and transport since periodic wetting and drying makes these areas prone to methylation of mercury. Methylated mercury is a serious concern because it can bio-accumulate in fish, and in turn become an issue to the health of humans and wildlife that consume these fish. We recommend that the SPEIR analyze the potential impacts of higher loading of methylmercury, because of widespread restoration of seasonally inundated floodplains, to both water quality and to the health of humans and wildlife.

Delta Plan Policy **ER P4** (23 CCR Section 5008) calls for levee projects to, where feasible, increase floodplains and riparian habitats. The policy also requires the evaluation of setback levees in several areas of the Delta, which include: The Sacramento River between Freeport and Walnut Grove; the San Joaquin River from the Delta boundary to Mossdale Paradise Cut, Steamboat Slough, Sutter Slough, the North and South Forks of the Mokelumne River, and urban levee improvement projects in the cities of West Sacramento and Sacramento. Regarding increasing riparian habitat on or along levees, we want you to be aware of a report our Council recently endorsed titled "Improving Habitat along Delta Levees" (the report can be found on our website at <http://deltacouncil.ca.gov/docs/delta-council-meeting-levees-white-paper/improving-habitats-along-delta-levees-review-past>). This report summarizes lessons learned from monitoring reports and through interviews with experts about which habitat designs along levees may provide greater benefits to target native species (with an emphasis on salmon and riparian birds) and provides guidance to ensure that project effectiveness can be better evaluated in the future.

Delta Plan Recommendation **ER R2** calls for DWR, California Department of Fish and Wildlife (CDFW), and the Delta Conservancy to prioritize and implement habitat restoration projects in areas designated by the Delta Plan as Priority Habitat Restoration Areas (PHRAs). These areas include the Yolo Bypass, Cache Slough Complex, Cosumnes River-Mokelumne River confluence, Lower San Joaquin River floodplain, Suisun Marsh, and the Western Delta/Eastern Contra Costa County. ER R2 also calls for habitat restoration projects to ensure connections between areas being restored and existing habitat areas and other elements of the landscape needed for the full life cycle of the species that will benefit from the restoration project.

We anticipate that the 2017 CVFPP will include potential floodplain restoration activities, for which three of the Delta Plan PHRAs are well suited (i.e., Lower San Joaquin River floodplain, Yolo Bypass, and Cosumnes River-Mokelumne River confluence). The Delta Plan's vision for

the Lower San Joaquin River floodplain PHRA includes “reconnect the floodplain and restore more natural flows to stimulate flood webs that support native species” and to “integrate habitat restoration with flood management actions, when feasible.” The Delta Plan’s vision for the Yolo Bypass PHRA is to “enhance the ability of the Yolo Bypass to flood more frequently to provide more opportunities for migrating fish” while the overall vision for the Cosumnes River-Mokelumne River confluence PHRA is to “allow these unregulated and minimally regulated rivers to flood over their banks during winter and spring frequently and regularly to create seasonal floodplains and riparian habitats that grade into tidal marsh and shallow subtidal habitats.”

Invasive Species

Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for the potential for new introductions of or improved habitat conditions for nonnative invasive species be avoided or mitigated in a way that protects the ecosystem. Analysis on this matter should address both nonnative wildlife species as well as terrestrial and aquatic weeds. To the maximum extent practicable, design of habitat restoration and creation actions should avoid or minimize effects that would lead to establishment of nonnative invasive species populations on site before relying upon mitigation measures. In the event mitigation is necessary, we recommend following the mitigation measures provided in the Delta Plan Program EIR (see below for more details regarding mitigation measures guidance).

Land Use Conflicts

Delta Plan Policy **DP P2** (23 CCR Section 5011) states that “water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission.”

If agricultural lands within the Delta are proposed to be converted as a result of flood risk reduction or ecosystem restoration projects under the CVFPP, we recommend that you work closely with the appropriate Delta counties to ensure that adequate mitigation is provided for these impacts, as well as consult with the Delta Protection Commission. Additionally, for any alternatives that would involve impacts to agricultural lands, we suggest incorporating Delta Plan mitigation measures related to Agricultural and Forestry Resources (see below for more details regarding mitigation measures guidance).

Flood 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 the California Department of Water Resources (DWR) and the CVFPB in achieving a balance in funding the various goals. 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 Policy RR P1. The Council is currently in the process of updating the interim priorities in the Delta Plan through its work on the Delta Levees Investment Strategy (<http://deltacouncil.ca.gov/delta-levees-investmentstrategy>). Once the Delta Levees Investment Strategy is completed RR P1 will be revised to reflect an updated investment strategy for the Delta's levees.

Delta Plan Recommendations

The Council recommends protecting and improving existing recreation opportunities while seeking ways of providing new and better coordinated opportunities. Delta Plan Recommendation DP R11 calls for providing new and protecting existing recreational opportunities in the Delta and Suisun Marsh, using the California State Parks' Recreational Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh and the Delta Protection Commission's Economical Sustainability Plan as guides. Additionally, Delta Plan Recommendation DP R16 calls for, where feasible, encouraging recreation opportunities on public lands, including bank fishing, hunting, levee-top trails, and environmental education.

We also recommend that DWR consider Delta Plan Recommendation RR R5, which calls for an evaluation and implementation of a bypass and floodway on the San Joaquin River near Paradise Cut. We also hope that the work on the update for the CVFPP can make progress towards Delta Plan Recommendation RR R8 which calls for DWR, in conjunction with the Central Valley Flood Protection Board, CDFW, and the Delta Conservancy, to develop criteria to define location for future setback levees for the Delta and the Delta watershed.

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 those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective.

Delta Plan Program EIR's **Biological Resources Mitigation Measure 4-1** calls for an invasive species management plan to be developed and implemented for any projects that could lead to introduction or facilitation of invasive species establishment. The plan must ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels and be based on best available science and developed in consultation with Department of Fish and Wildlife and local experts (e.g., UC Davis, California Invasive Plant Council). This mitigation requirement also calls for the plan to include the following elements:

- Nonnative species eradication methods (if eradication is feasible)
- Nonnative species management methods
- Early detection methods
- Notification requirements

- Best management practices for preconstruction, construction, and post construction periods
- Monitoring, remedial actions and reporting requirements
- 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

Delta Plan Program EIR's **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.

We believe that it is particularly important to protect and maintain channel margin habitat along important salmonid migratory corridors in the Delta, such as the Sacramento River mainstem and its major distributaries of Sutter and Steamboat Sloughs. We recommend that to the maximum extent feasible, any impacts to channel margin habitat along important salmonid migration corridors in the Delta be mitigated on-site; 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 as where the impacts would occur (e.g., impacts to habitat along Steamboat Slough should be mitigated along Steamboat Slough) to demonstrate that the mitigation is restoring equivalent, in-kind habitat.

Agricultural and Forestry Resources Mitigation Measure 7-1 in the Delta Plan Program EIR calls for projects that result in permanent conversion of farmland to preserve in perpetuity other farmland through acquisition of an agricultural conservation easement, or contributing funds to a land trust or other entity quality to preserve farmland in perpetuity (at a target acreage ratio of 1:1).

Final Remarks

If you need any clarification regarding our comments, I encourage you to contact me at 916-445-2168 or Jessica.Davenport@deltacouncil.ca.gov.

Sincerely,



Jessica Davenport
Acting Deputy Executive Officer, Planning
Delta Stewardship Council