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DELTA STEWARDSHIP COUNCIL

A California State Agency

February 23, 2017

Chair
Randy Fiorini

David Forkel, Chairman
Reclamation District No. 2028
343 East Main Street, Suite 815
Stockton, CA 95202

Members
Frank C. Damrell, Jr.
Patrick Johnston
Susan Tatayon
Skip Thomson
Ken Weinberg

Executive Officer
Jessica R. Pearson

Re: Initial Study/Mitigated Negative Declaration for the Bacon Island Levee Rehabilitation Project

Dear Mr. Forkel:

Thank you for the opportunity to review and comment on the Initial Study and Mitigated Negative Declaration (IS/MND) for the *Bacon Island Levee Rehabilitation Project*. The project would modify approximately 4.7 miles of existing levee on Bacon Island to achieve a Hazard Mitigation Plan (HMP) levee cross section, plant native grasses on the landside slope while implementing mitigation measures to avoid, minimize, and compensate for any project effects. The Council supports your efforts to reduce risk to your district, while incorporating habitat as a project purpose, and we appreciate the work that has gone into preparing the IS/MND. Making this work available to a wide variety of stakeholders is important for communicating the project goals and any potential impacts.

As you know, the Delta Stewardship Council (Council) is a State agency created through the Delta Reform Act of 2009 to develop and implement a legally enforceable long-term management plan for the Delta and Suisun Marsh. 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 protecting and enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place. The Council is directed to provide "advice to local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan" (Water Code section 85212).

"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

The Delta Reform Act also called on the Council to lead a multi-agency effort to update priorities for State investments in the Delta levee system. This effort is focused on prioritizing a reduction in the risk from levee failures, including protecting people, property, and State interests. It also aims to advance the coequal goals of improved water supply reliability and restoring the Delta ecosystem, as well as protecting and enhancing the values of the Delta as an evolving place. With these goals in mind the Council has been developing the Delta Levees Investment Strategy (DLIS)¹ to prioritize levee investment in the Delta. It is with DLIS and the coequal goals in mind that Council staff submits these comments.

Council staff met with Reclamation District 2028 (RD 2028) representatives on January 24, 2017 for early consultation to discuss Council staff's impressions regarding the project's potential for being a covered action. 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 the California Environmental Quality Act (CEQA), we offer comments below that we believe you should consider prior to approval of the IS/MND.

Initial Study Specific Comments

- **1.4.10 Habitat Enhancement:** This section discusses preliminarily identified potential habitat areas on the landside of the levee totaling 4.3 acres. It states "These areas are outside the levee prism and can be utilized for habitat enhancement without conflicting with levee maintenance or operation." It states, also, that the landowner will maintain the proposed areas according to a future management agreement with the California Department of Water Resources (DWR) and the California Department of Fish and Wildlife (CDFW). It is unclear whether this habitat enhancement is a component of this project so additional discussion clarifying this project relationship would be helpful.
- The IS/MND should acknowledge the Delta Plan in its discussion of the project's environmental setting and identify any inconsistencies with the Delta Plan, if any, as described in section 15125(d) of the CEQA Guidelines.

Applicable Delta Plan Policies

Delta Plan Consistency

¹ <http://deltacouncil.ca.gov/delta-levees-investment-strategy>

RD 2028 should consider whether the project is a "covered action" under the Delta Plan. State and local agencies are required to certify their projects' consistency with the Council's 14 regulatory policies if their proposed activity is a "covered action" under the Delta Plan, which includes plans, programs, or projects (as defined in section 21065 of the Public Resources Code) that would occur, in whole or in part, within the Delta or Suisun Marsh. According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if that project is a "covered action" and, if so, file a certification of consistency with the Delta Plan. Council staff is available to consult with you further, as provided by Water Code section 85225.5, about this process.

In evaluating whether the project may create any inconsistencies with the Delta Plan, potentially relevant policies include, but may not be limited to:

Coequal Goals

Delta Plan Policy G P1 (California Code of Regulations [CCR] 23 section 5002) describes findings to establish consistency with the Delta Plan, including findings related to mitigation measures, best available science, and adaptive management. In some cases, it may not be feasible for a covered action to be fully consistent with all relevant regulatory policies, but it may still be consistent with the Delta Plan if on whole it is consistent with the coequal goals. In any case, it is important to clearly describe how the project contributes to the achievement of the coequal goals, as defined in Water Code section 85054 and the Council's Delta Plan implementing regulations (23 CCR section 5001(h)).

Mitigation

Delta Plan Policy G P1 also requires that actions not exempt from CEQA and subject to Delta Plan regulations include applicable feasible mitigation measures consistent with or more effective than those identified in the Delta Plan Environmental Impact Report. These mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program (MMRP) document available at <http://bit.ly/DeltaPlanMMRP>. Recognizing that mitigation may not always perform as expected, we encourage you to include an adaptive management plan in the MND for monitoring impacts and progress toward project objectives and modifying mitigation measures if necessary. Adaptive management is a strategy that allows for making management decisions under uncertain conditions using the best available science. It also increases the likelihood of success in obtaining project goals in a manner that is both economical and effective. We recommend the principles of adaptive management be incorporated into the Bacon Island Levee Rehabilitation Project, especially with regards to the ecosystem enhancement component of the project (for more details about adaptive management, please refer to Appendix 1B of the Delta Plan available at <http://deltacouncil.ca.gov/docs/appendix-1b>). This could allow RD 2028 to monitor the effectiveness of mitigation measures and habitat enhancements, and allow for sharing of results so that others can benefit from the district's experience. Delta Stewardship Council staff, including staff from the Delta Science Program, can provide assistance in the use of best available science and adaptive management in your preparation of the EIR and the long term management plan for the project area.

Prioritization of State Investments

Delta Plan Policy RR P1 (23 CCR section 5012) requires that discretionary State investments in Delta flood risk management be prioritized to address emergency preparedness, response and recovery. As a non-project levee receiving State funds, funding is linked to benefits provided. We appreciate that RD 2028 has outlined the benefits anticipated from project completion. It would be helpful to also include by reference the Project Funding Agreement and list the associated benefits in more detail.

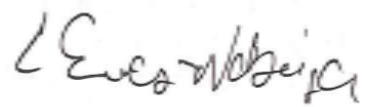
Recreation Recommendations

Delta Plan Recommendation DP R11 calls for providing new and protecting existing recreational opportunities in the Delta and Suisun Marsh. The Delta Plan recommends protecting and improving existing recreation opportunities while seeking ways of providing new and better coordinated opportunities. Additionally, Recommendation DP R16 states that public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee-top trails, and environmental education. Opportunities to provide these recreation uses as part of the Bacon Island Levee Rehabilitation project should be explored.

Final Remarks

Once again, I thank you for the opportunity to review and provide comments on the IS/MND and look forward to continuing to work with RD 2028 and its representatives. If you would like to discuss any of the suggestions included in this letter, please contact Erin Mullin at Erin.Mullin@deltacouncil.ca.gov or 916-445-5459.

Sincerely,



Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council