



**DELTA STEWARDSHIP COUNCIL**  
*A California State Agency*

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August 13, 2018

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Via email: SBuenting@ci.antioch.ca.us

**RE: Comments on the Public Draft Environmental Impact Report for the Proposed City of Antioch Brackish Water Desalination Project, SCH# 2017082044**

Dear Mr. Scott Buenting:

Thank you for the opportunity to review and comment on the City of Antioch's (City) Proposed Brackish Water Desalination Project (Project) Public Draft Environmental Impact Report (DEIR) dated June 2018. The Delta Stewardship Council (Council) previously sent a letter with comments on the NOP for the Project on September 13, 2017.

The DEIR describes the proposed Project facilities as:

- a new intake pump station and fish screen to replace existing river intake facilities;
- a new raw water pipeline connection to the City's existing raw water pipeline to allow water to be conveyed directly from the San Joaquin River to the City's Water Treatment Plant,
- a desalination plant with a finished water capacity of 6 mgd and related facilities, and
- a brine disposal pipeline and connection to Delta Diablo's Wastewater Treatment Plant (WWTP) outfall back into the San Joaquin River.

The DEIR states that the Project objectives are to improve water supply reliability and water quality for customers; develop a reliable and drought-resistant water source to reduce dependency on purchased water supplies by maximizing the use of the City's pre-1914 water rights; maximize the use of existing infrastructure to maintain economic feasibility; provide cost effective operational flexibility to allow the City to respond to changes in source water quality, emergencies, changes in climate, and Delta conditions; and preserve the value of the City's pre-1914 water rights.

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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*

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The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013.

As stated in the Delta Reform Act, the State has "coequal goals' (which) means 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" (Water Code section 85054).

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

Based on the Project description and objectives, Council staff believe the Project meets the definition of a covered action. The project would support one of the coequal goals to provide a more reliable water supply for California, particularly for the City of Antioch. By potentially developing a flexible local water supply, the City can improve its regional water self-reliance and reduce reliance on the Delta, especially when Delta water quality and flow requirements may restrict available Delta exports.

For the purposes of compliance with both the Delta Reform Act and CEQA, we offer the following comments below for your consideration in preparation of the Final Environmental Impact Report (FEIR).

### **Comments on the DEIR**

The following comments address actions outlined in the DEIR relevant to the Delta Plan.

**Regulatory Setting:** The Council commends the City for acknowledging that the proposed Project requires a certification of consistency with the Delta Plan (DEIR, p. 2-62). In the next section of this letter, we identify Delta Plan policies applicable to the Project. These policies should be identified in the applicable regulatory setting discussion for each topic in the FEIR, as noted in the comments below.

**Inconsistencies with the Delta Plan:** The FEIR should discuss any inconsistencies between the proposed project and the Delta Plan, as required by 15125(d) of CEQA Guidelines. Please

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note that the CEQA Guidelines' Appendix G states that a project that is inconsistent with any applicable land use plan, policy, or regulation may result in a finding of significant impact on biological resources.

**Chapter 3.11 Delta Hydrology and Water Quality:** The DEIR identifies two Delta Plan recommendations, Recommendation **WQ R1**, Protect Beneficial Uses, and Recommendation **WQ R2**, Identify Covered Action Impacts in Section 3.11.2 on page 3.11-16, and again in the analysis of Impact 3.11-1 on page 3.11-38 (Table 3.11-8). These are Delta Plan recommendations, not regulatory policies. They do not represent criteria that a covered action would need to meet to demonstrate consistency with the Delta Plan. The Project can demonstrate consistency with the Delta Plan by filing a certification of consistency, as described in detail on the Council's website: <http://deltacouncil.ca.gov/how-certify>.

Please correct references to **WQ R1** and **WQ R2** in Section 3.11 of the FEIR from Delta Plan "policies" to Delta Plan "recommendations".

### **Comments regarding Delta Plan Policies**

The following section describes Delta Plan policies that may be applicable to the Project based on the available information. This information is offered to assist the City to describe the relationship between the Project and the Delta Plan in the FEIR as part of the record supporting the City's certification of consistency.

The Delta Plan includes regulatory policies that are applicable to all covered actions. Below, we have highlighted key regulatory policies that may be specifically relevant to the Project. To better assist in your certification of consistency, we encourage you to review the following Delta Plan policies before filing:

**Detailed Findings to Establish Consistency with the Delta Plan:** Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through: A) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>); and B) documentation of adequate resources to implement the proposed adaptive management plan. Funding of any monitoring, on-going mitigation and the facilitation of the adaptive management plan needs to be identified and secure.

**Mitigation Measures:** Delta Plan Policy **G P1** requires that actions, not exempt from the California Environmental Quality Act 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. Mitigation Measures in the Delta Plan's Mitigation and Monitoring Report Program are available at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a\\_attach%2002.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%2002.pdf)

**Best Available Science and Adaptive Management:** Delta Plan Policy **G P1** also states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the Project. The regulatory definition of “best available science” is provided in Appendix 1A of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>). We recommend that the project proponents prepare an adaptive management strategy and plan consistent with the framework described in Appendix 1B of the Delta Plan.

**Reduce Reliance on the Delta through Improved Regional Water Self-Reliance:** Delta Plan Policy **WR P1** (23 Cal. Code Regs. section 5003) requires proposed actions that export water from, transfer water through, or use water in the Delta shall contribute to reduced reliance on the Delta and improve regional self-reliance. The Project proposes to use Delta water as its source to store water for the various private and public uses. To be consistent with the Delta Plan, Project proponents should describe how operations and timing of their diversions of Delta water would provide improved regional water supply self-reliance particularly when the flow in the Delta is critically low and drought conditions exist.

Please identify Policy **WR P1** in Section 3.10.2, Local Hydrology and Water Quality - Regulatory Framework of the FEIR under a Delta Stewardship Council – Delta Plan heading.

**Delta Flow Objectives:** Delta Plan Policy **ER P1** (23 Cal. Code Regs. section 5005) requires that the State Water Resources Control Board’s Bay-Delta Water Quality Control Plan (Water Board’s Bay-Delta WQCP) flow objectives be used to determine consistency with the Delta Plan. Water Code sections 85057.5(a)(3) and 5001(j)(1)(E) cover a proposed action that could significantly affect flow in the Delta. The Draft EIR identifies Project objectives to improve water supply reliability and water quality for customers and to develop a reliable and drought-resistant water source to reduce dependency on purchased water supplies. The Project should support water deliveries that align with the Water Board’s Bay-Delta WQCP flow objectives.

Please identify Policy **ER P1** in Section 3.11.2, Delta Hydrology and Water Quality - Regulatory Framework of the FEIR under a Delta Stewardship Council – Delta Plan heading.

**Restore Habitat in a Manner Consistent with the Delta Plan:** Delta Plan Policy **ER P2** (23 Cal. Code Regs. section 5006) states that habitat restoration must be consistent with Appendix 3 of the Delta Plan regulations and that restoration will occur at appropriate elevations. Appendix 3 of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf>), which is an excerpt from the 2011 Draft Ecosystem Restoration Program Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta including open water, subsided lands, floodplains, and upland areas. It also includes a vision for use of Delta agricultural lands to support special-status wildlife species.

Please identify Policy **ER P2** in Section 3.4.2, Terrestrial Biological Resources – Regulatory Framework in the FEIR under a Delta Stewardship Council – Delta Plan heading.

**Restore Opportunities to Restore Habitat:** Delta Plan Policy **ER P3** (23 Cal. Code Regs. section 5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>), significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated. According to the DEIR section 3.4.3 on page 3.4-22 states, “Potential project impacts were identified to a select number of special-status birds, migratory bird species, and one bat species, each of which has the potential to occur within or in the general vicinity of the project footprint.” These types of impacts in the PHRAs will need to be avoided or mitigated at equal or greater value to the mitigation measures outlined in the Delta Plan Mitigation and Monitoring Reporting Program ([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)).

Please identify Policy **ER P3** in Section 3.4.2, Terrestrial Biological Resources – Regulatory Framework in the FEIR under a Delta Stewardship Council – Delta Plan heading.

**Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species:** Delta Plan Policy **ER P5** (23 Cal. Code Regs. section 5009) calls for avoiding introduction and habitat improvements for invasive, nonnative species or mitigating these potential impacts in a manner that appropriately 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, covered actions should avoid or mitigate for conditions that would lead to establishment of nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures should be consistent with the Delta Plan Mitigation Monitoring and Reporting Program.

Please identify Policy **ER P5** in Section 3.3.2, Aquatic Biological Resources – Regulatory Framework in the FEIR under a Delta Stewardship Council – Delta Plan heading.

**Locate New Urban Development Wisely:** Delta Plan Policy **DP P1** (23 Cal. Code Regs. section 5010) calls for locating new residential, commercial, and industrial development within areas designated for development in the Delta Plan, based on city and county general plans approved before adoption of the Delta Plan on May 17, 2013. Development is also permitted outside areas designated for development if it is consistent with the land uses designated in county general plans approved before adoption of the Delta Plan. The Council notes that the DEIR analyzes consistency with Policy **DP P1** in Section 3.12, Land Use and Planning.

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**Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats:**

Delta Plan Policy **DP P2** (23 Cal. Code Regs. section 5011) requires 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.

The DEIR identifies proposed water management facility improvements in the Delta, including replacing the existing San Joaquin River intake pump station, constructing a desalination facility with associated equipment and appurtenances; and constructing pipelines for the conveyance of source water and brine concentrate. The Council notes that the DEIR analyzes consistency with Policy **DP P2** in Section 3.12, Land Use and Planning.

**Closing Comments**

The Council would like to continue to work with the City to ensure the consistency of the Brackish Water Desalination Project with the Delta Plan, and we look forward to continued coordination to further our related efforts.

Council staff is available to continue discussions about how to ensure that your project is consistent with the Delta Plan as you proceed in the next stages of your project approval process. I encourage you to contact Anthony Navasero of my staff at (916) 445-5471 or [Anthony.Navasero@deltacouncil.ca.gov](mailto:Anthony.Navasero@deltacouncil.ca.gov) with any questions, comments, or concerns.

Sincerely,



Jeff Henderson, AICP  
Deputy Executive Officer  
Delta Stewardship Council