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DELTA STEWARDSHIP COUNCIL

A California State Agency

September 10, 2018

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Via email: manisay.khamphanh@water.ca.gov

RE: Winter Island Tidal Habitat Restoration Project Draft Initial Study and Mitigated Negative Declaration, SCH#2018082025

Dear Ms. Khamphanh:

Thank you for the opportunity to review and comment on the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) for the Winter Island Tidal Habitat Restoration Project (proposed project). The Delta Stewardship Council (Council) recognizes this effort by the Department of Water Resources (DWR) to complete this important component of the State's EcoRestore program commitments.

Based on the project description in the Draft IS/MND, the Council understands that the proposed project encompasses approximately 544 acres of habitat enhancement, intended to promote unrestricted tidal connectivity between the interior portion of Winter Island and surrounding channels. Although Winter Island is composed of three separate parcels (the main island, a smaller northern island, and a parcel of private property), the proposed project area includes only the main island and smaller northern island. Existing conditions at the proposed project site are predominately muted tidal wetlands with a central island channel enclosed by a levee system. The proposed project would include the removal of water control structures and excavation of an eastern channel to reestablish full tidal connections to the existing marsh and surrounding waterways, enhancing aquatic and wetland habitat. Project activities would include creating a 100-foot wide breach at the southern end of the island, and widening the existing eastern tidal channel; as well as the conversion of aquatic, wetland, and upland habitat.

"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 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 for the Delta: 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).

Covered Action Status

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, which are referred to as "covered actions". The Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to demonstrate consistency with 14 regulatory policies identified in the Delta Plan when carrying out, approving, or funding a covered action.

Based on the project location and scope, the proposed project meets the definition of a covered action. DWR must determine if the project is a covered action, and if so, file a certification of consistency with the Delta Plan.

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments below for your consideration in preparing the Final IS/MND for this project.

Comments on the Draft IS/MND

The following comment addresses content in the Draft IS/MND relevant to the Delta Plan.

- In the Final IS/MND, please include Delta Plan Policy ER P3: Protect Opportunities to Restore Habitat in the list of policies and recommendations applicable to the project under Section 3.10.1 - Delta Plan (see Draft IS/MND, page 93).

Comments regarding Delta Plan Policies and Consistency Certification

The following section describes Delta Plan policies that may be applicable to the proposed project based on the available information. This information is offered to assist DWR to better describe the relationship between the proposed project and the Delta Plan in the Final IS/MND as part of the record supporting the project'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 proposed project. We encourage DWR to review the following Delta Plan policies before submitting a certification of consistency.

Mitigation Measures

Delta Plan Policy **G P1** (23 CCR Section 5002) 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 Environmental Impact Report or substitute mitigation measures that are equally or more effective. See the Delta Plan's Mitigation and Monitoring Report Program (MMRP) available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

The Draft IS/MND proposes mitigation measures related to biological resource, cultural resource, hydrology/water quality, and hazards and hazardous materials impacts intended to reduce the subject impacts to a less-than-significant level. Council staff recommends that DWR review the Delta Plan MMRP to determine if additional feasible mitigation measures related to impacts identified in the Draft IS/MND are applicable. If such mitigation measures are available, please incorporate those measures in the Final IS/MND.

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 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>.

Continued coordination between Council staff and DWR is advised to ensure that best available science is consistently applied to the planning, construction, and operation of the proposed project.

Delta Plan Policy **G P1** (23 CCR 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.

The Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance to help guide project proponents with the appropriate application of best available science and adaptive management. Please contact Karen Kayfetz (Karen.Kayfetz@deltacouncil.ca.gov) of the Delta Science Program for additional information.

Restore Habitat at Appropriate Elevations

Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be consistent with Appendix 3 <http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf> of the Delta Plan regulations and that restoration must occur at appropriate elevations. Appendix 3, which is an excerpt from the 2011 Draft Ecosystem Restoration Program (ERP) Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta including open water, wetland, and upland areas. Council staff recommends that DWR review Appendix 3 and consider including supporting documentation when developing a consistency determination.

Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (23 CCR 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.

There is overlap between the project site and the Western Delta PHRA. As such, Council staff recommends that DWR discuss in the certification of consistency the habitat restoration benefits the proposed project offers relative to the viability of restoration of the balance of the Western Delta PHRA.

Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for avoiding introductions and habitat improvements for invasive nonnative species or mitigating these potential impacts in a manner that appropriately protects the ecosystem. Supporting documentation 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 Measures 4-1 available at http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

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Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (23 CCR Section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies. For example, the Draft IS/MND states that the project area is adjacent to the parcel owned by Winter Island Farms and is in close proximity to Brown's Island. Analysis from the Draft IS/MND, including assessments of regional impacts on salinity in the Suisun Marsh, may be helpful to demonstrate consistency with DP P2.

We appreciate DWR's willingness to engage with us and look forward to continued coordination as the project proceeds toward consistency certification. Please contact Ron Melcer at (916) 284-1619 (Ronald.Melcer@deltacouncil.ca.gov) or Megan Brooks at (916) 445-5646 (Megan.Brooks@deltacouncil.ca.gov) with any questions.

Sincerely,

[Original signed by]

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council