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DELTA STEWARDSHIP COUNCIL

A California State Agency

October 15, 2018

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Via email: emily.bacchini@smud.org

RE: Notice of Preparation of a Draft Environmental Impact Report for SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan, SCH# 2018092030

Dear Ms. Bacchini:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of the Draft Environmental Impact Report (EIR) for the Sacramento Municipal Utility District (SMUD) Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP). The purpose of the HCP is to provide incidental take coverage for 15 plants and animal species for a period of up to 30 years. Based on the project description in the NOP, the Delta Stewardship Council (Council) understands that the primary intent of the HCP is to provide mitigation for impacts on covered species, such as the Giant garter snake and Swainson's hawk. The HCP also intends to contribute conservation measures to protecting a wide range of natural resources and habitat for native species, natural communities, and local ecosystems. The total size of the HCP Permit Area is approximately 578,000 acres. Within the Sacramento-San Joaquin Delta (Delta), the HCP Permit Area includes portions of SMUD's Service Territory in Sacramento County, and also a swath of land centered on SMUD's gas pipeline in Yolo County. Portions of the Permit Area are located in both the Delta Primary Zone and Delta Secondary Zone.

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,

"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

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 as described in the NOP, the proposed project meets the definition of a covered action. SMUD 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 for your consideration in preparing the Draft EIR for this project.

Comments regarding the NOP and Content of the Draft EIR

Given the list of Covered Activities and land cover and land use types identified, please consider including additional Covered Species (described in Table 1 of the NOP) that would require incidental take coverage, such as Greater Sandhill Crane, Cooper’s Hawk, and Western red bat. The recently adopted South Sacramento HCP provides recent species habitat models for portions of the Permit Area, and identifies sensitivities and threats that may be useful in assessing the need for incidental take of additional Covered Species.

The Draft EIR should incorporate the following content related to the Delta Plan:

- Please describe and reference the 2009 Delta Reform Act in relevant discussions of State plans, policies, and regulations.
- Please identify the Delta Plan in the EIR's description of the regulatory setting for each applicable resource section. Where possible, please reference specific applicable regulatory policies as described below.

Comments regarding Delta Plan Policies and Consistency Certification

The following section describes Delta Plan policies that may apply to the proposed project based on available information. This information is intended to assist SMUD in describing the relationship between the proposed project and the Delta Plan in the Draft EIR 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 relevant to the proposed project. We encourage SMUD to review the following Delta Plan policies prior to completing the Draft EIR and in anticipation of submitting a certification of consistency to the Council at a later date.

Mitigation Measures

Delta Plan Policy **G P1** (23 Cal. Code Regs. 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.

Please review the Delta Plan MMRP to determine if feasible mitigation measures related to significant impacts identified in the Draft EIR would apply. If Delta Plan Program EIR mitigation measures are applicable and feasible, please incorporate such measures in the Draft EIR.

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 Cal. Code Regs. 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>.

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.

The Council includes staff from the Delta Science Program that can provide guidance to help project proponents with the appropriate application of best available science and adaptive management in advance of a certification of consistency with the Delta Plan.

Restore Habitat at Appropriate Elevations

Delta Plan Policy **ER P2** (23 Cal. Code Regs. section 5006) states that habitat restoration must be consistent with restoration guidance within 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 per Appendix 4 <http://deltacouncil.ca.gov/docs/appendix-4>. 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.

If implementation of the HCP's Conservation Strategy would include habitat restoration within the Delta, please describe how it will follow the guidance provided in both Appendix 3 and Appendix 4 of the Delta Plan as part of the certification of consistency.

Protect 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 NOP, the HCP Permit Area includes portions of the Mokelumne and Cosumnes Rivers. If the HCP Permit Area overlaps with the Mokelumne and Cosumnes River Confluence PHRA, SMUD must demonstrate how the proposed project would avoid or mitigate significant adverse impacts to the opportunity to restore habitat within the PHRA.

Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 Cal. Code Regs. 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.

In the event that mitigation for invasive nonnative species is warranted, mitigation and minimization measures should be consistent with the Delta Plan Mitigation Measure 4-1 (http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf).

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

Delta Plan Policy **DP P2** (23 Cal. Code Regs. 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.

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Please consider the applicability of this policy to the location of habitat mitigation or restoration sites and any resultant changes to existing uses in and land use jurisdiction of cities and counties in the HCP Permit Area within the Delta, including agricultural uses. The Council also encourages SMUD to continue to coordinate with Sacramento County as they have recently adopted the South Sacramento HCP and certain project objectives and project locations overlap between the HCPs.

As mentioned at the scoping meeting, the Council would appreciate an opportunity to work collaboratively with SMUD to discuss the issues outlined in this letter as you proceed in the next stages of your project design and approval processes. We look forward to coordinating our first early consultation meeting. Please contact Ron Melcer at (916) 284-1619 (Ronald.Melcer@deltacouncil.ca.gov) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer