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DELTA STEWARDSHIP COUNCIL

A California State Agency

April 15, 2019

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Via email: Dan.Riordan@water.ca.gov

RE: Comments on Partial Recirculation of Draft Environmental Impact Report: Prospect Island Tidal Habitat Restoration Project, SCH#2013052056

Dear Mr. Riordan:

Thank you for the opportunity to review and comment on the Partial Recirculation of Draft Environmental Impact Report (DEIR): Prospect Island Tidal Habitat Restoration Project (proposed project). The Delta Stewardship Council (Council) recognizes the Department of Water Resources' (DWR's) effort to meet its obligations under the Biological Opinion for the long-term coordinated operations of the State Water Project through restoration of approximately 1,600 acres of tidal habitat at Prospect Island in Solano County.

The Council is an independent agency of the State of California established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of achieving a more reliable water supply and restoring the Sacramento-San Joaquin River Delta (Delta) ecosystem, while protecting and enhancing the Delta's cultural, recreational, and agricultural values (Cal, Water Code §85054). These goals are to be achieved through implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013, and are set forth in Title 23 of the California Code of Regulations.

Covered Action Determination and Certification of Consistency with the Delta Plan

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as

"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

“covered actions.” (Cal. Water Code §§ 85022(a) and 85057.5.) The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Cal. Water Code §§ 85057.5 and 85225.) Water Code section 85057.5(a) provides a four-part test for meeting the definition of a covered action.

Based on the project location and scope, as provided in the 2016 DEIR and subsequently in the Partial Recirculated DEIR, the proposed project appears to meet the definition of a covered action set forth in Water Code section 85057.5(a) because it:

1. Will occur in whole or in part within the boundaries of the Legal Delta (Water Code §12220) or Suisun Marsh (Public Resources Code §29101). (Cal. Water Code § 85057.5(a)(1).)
2. Will be carried out, approved, or funded by the State or a local public agency. (Cal. Water Code § 85057.5(a)(2).)
3. Is covered by one or more provisions of the Delta Plan (Cal. Water Code § 85057.5(a)(3)), which includes the applicable regulatory policies contained in the Delta Plan (23 CCR section 5003-5015). The Delta Plan regulatory policies that may apply to the project are discussed below.
4. Will have a significant impact on the achievement of both of the coequal goals and the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. (Cal. Water Code § 85057.5(a)(4).)

The Delta Reform Act requires the State or local agency that proposes to undertake the covered action to file a certification of consistency with the Delta Plan prior to initiating the implementation of the project. (Cal. Water Code § 85225.)

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The Council notes that DWR has prepared a partial Recirculated DEIR for this project addressing revisions to the project description, alternatives, and impact analysis related to hydrology, water quality, air quality, noise, and transportation and traffic. We understand that DWR will not respond to comments received during the recirculation period that relate to chapters or portions of the document that are not recirculated in the Recirculated DEIR. The Council submitted a comment letter on the 2016 DEIR dated October 6, 2016. The comments offered in that letter still apply to the Council’s review of the project.

In the interest of focusing the environmental documentation for the project to serve as a basis for DWR’s certification of consistency, we offer the following comments describing regulatory Delta Plan policies that may apply to the proposed project based on the information available in the 2016 DEIR and the Recirculated DEIR. This information may also assist DWR to better describe the relationship between the proposed project and the Delta Plan in the Final EIR.

General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan
Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) specifies what must be addressed in a certification of consistency filed by a project proponent for a covered action. The following is a subset of G P1 requirements that a project must fulfill to demonstrate consistency with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1, subsection (b)(2)**, (23 CCR Section 5002(b)(2)) requires that covered actions not exempt from CEQA 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 (Delta Plan MMRP) are available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf

In addition to mitigation measures proposed in the 2016 DEIR, the Recirculated DEIR for the project identifies revised and additional mitigation measures for water quality, air quality, and transportation and traffic. Council staff recommends that DWR review the Delta Plan MMRP and include applicable Delta Plan measures in the Final EIR, or ensure that proposed project mitigation is equally or more effective than applicable Delta Plan measures.

Best Available Science

Delta Plan Policy **G P1, subsection (b)(3)**, (23 CCR Regs. section 5002(b)(3)) requires covered actions to document use of best available science as relevant to the purpose and nature of the project.

Best available science is defined in the Delta Plan as the best scientific information and data for informing management and policy decisions, which must be consistent with the guidelines and criteria found in Appendix 1A of the Delta Plan, available at <http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>. (Cal. Code Regs, tit. 23, § 5001, subd. (f).) Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. This policy generally requires that the lead agency clearly document and communicate the process for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making. Council staff recommends that DWR explain the role of the Delta Regional Ecosystem Restoration Implementation Plan (DRERIP) technical review, the "Science Panel" convened in March 2014, and other forums such as the Fishery Agency Strategy Team (FAST) and Technical Review Panel in guiding planning and design of the project using best available science in the Final EIR.

Adaptive Management

Delta Plan Policy **G P1, subsection (b)(4)**, (23 CCR Regs. section 5002(b)(4)) 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 1 B of the Delta Plan that can be found at (<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.

Ecosystem Restoration Policy 2 (ER P2): Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (23 Cal. Code Regs. section 5006) requires habitat restoration to be consistent with Delta Plan Appendix 3 (<http://deltacouncil.ca.gov/docs/appendix-3>), which provides guidance on the types of appropriate habitats given a restoration project site's location and elevation.

DWR should consider describing how the proposed restoration actions are consistent with the actions described in Appendix 3 for intertidal lands in the Final EIR.

Ecosystem Restoration Policy 3 (ER P3): Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (23 Cal. Code Regs. section 5007) states that within priority habitat restoration areas (PHRAs) depicted in Appendix 5 (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated. The project site is located within the Yolo Bypass PHRA.

DWR should consider describing how the project would avoid or mitigate impacts to the opportunity to restore habitat throughout the Yolo Bypass PHRA in the Final EIR.

Ecosystem Restoration Policy 5 (ER P5): 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 of and habitat improvements for invasive, nonnative species or for mitigating these potential impacts in a manner that appropriately protects the ecosystem.

DWR should consider how the project would avoid introduction of new habitat or improve existing habitat conditions for both nonnative wildlife species and terrestrial and aquatic weeds in the Final EIR. This analysis should fully consider the potential for such introduction or improvement of habitat for nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures should be consistent with Delta Plan Mitigation Measure 4-1, which can be found at:

http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf

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Delta as Place Policy 2 (DP P2): Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (23 Cal. Code Regs. section 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting project improvements/facilities to avoid or reduce conflicts with existing or planned future land uses when feasible. Policy DP P2 may also apply if mitigation habitat is required within the Delta.

The Final EIR should describe how the project would be sited to avoid or reduce conflicts with existing or planned future uses. This should include a description of measures employed by the project to mitigate conflicts with adjacent uses, and discuss how any comments received from local agencies and the Delta Protection Commission were considered by DWR.

CEQA Regulatory Setting

In addition to the specific comments above, please include a discussion of the Delta Plan and the specific applicable regulatory policy or policies in the Regulatory Setting portion of each resource section of the Final EIR to which a Delta Plan policy is applicable.

Closing Comments

As DWR proceeds with design, development, and environmental impact analysis of the project, we invite you to continue to engage Council staff in early consultation (prior to submittal of a certification of consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan. As part of the Council, the Delta Science Program's Adaptive Management Liaisons are also available to provide further consultation and guidance regarding appropriate application of best available science and adaptive management.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <http://deltacouncil.ca.gov/covered-actions>. The Council is available to discuss issues outlined in this letter as you proceed in the next stages of your project and approval processes. Please contact Ron Melcer at (916) 284-1619 (Ronald.Melcer@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

Cc: Cindy Messer, Chief Deputy Director, California Department of Water Resources