



DELTA STEWARDSHIP COUNCIL
A California State Agency

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June 26, 2013

Byron Buck
State and Federal Contractors Water Agency
1121 L Street, Suite 806
Sacramento, CA 95814

Via email: bbuck@sfcwa.org

RE: Comments on the Lower Yolo Restoration Project's Consistency with the Delta Plan

Dear Mr. Buck:

We recently reviewed Draft Environmental Impact Report (DEIR) for the Lower Yolo Restoration Project. Although we recognize that the comment period for the DEIR has closed, we would like to take this opportunity to provide input regarding how to ensure the consistency of the Lower Yolo Project with the Delta Plan, which was adopted on May 16, 2013.

We appreciate your presentation on the Lower Yolo Project (then referred to as the Yolo Ranch Project) at the December 2012 meeting of the Delta Stewardship Council (DSC), as well as your consultation on project design with Delta Science Program staff. We look forward to continued coordination between our agencies to further our related efforts.

As you know, the DSC sets state policy for the Delta through the Delta Plan and coordinates state and local agencies to achieve policy objectives. In addition, the Council was granted specific regulatory and appellate authority over certain actions 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.

It is important to note that not all actions that occur in whole or in part in the Delta are covered actions. For the State and Federal Contractors Water Agency (SFCWA) to determine whether the proposed Yolo Bypass Project is a covered actions under the Delta Plan and therefore subject to the regulatory provisions in the plan, it must start with the Delta Reform Act, which defines a covered action as (Water Code section 85057.5(a)):

...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

"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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1. *Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
2. *Will be carried out, approved, or funded by the state or a local public agency;*
3. *Is covered by one or more provisions of the Delta Plan;*
4. *Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.*

We encourage you to participate in early consultation with DSC staff. We can assist you in determining whether the project is a covered action, and if so, we can review the consistency of the proposed action with the Delta Plan's policies and make recommendations, as appropriate¹.

The DSC staff's review of the DEIR for the Lower Yolo Project identified the following policies² to consider in order to ensure consistency with the Delta Plan.

- **Best available science and adaptive management.** The proposed project would restore approximately 1226 acres of tidal wetland habitat (i.e., emergent perennial marsh) on a 3795-acre site composed of two properties in the Yolo Bypass: Yolo Ranch and Yolo Flyway Farms. The DEIR states that the project is intended to partially fulfill the 8,000-acre tidal habitat restoration obligations of the Department of Water Resources under the federal biological opinions regarding delta smelt and salmonids for the operation of the state and federal water projects. The project also could help meet the habitat restoration goals of the proposed Bay Delta Conservation Plan, if and when it is approved.

Delta Policy G P1 (23 CCR Section 5002) specifies what must be addressed in a certification of consistency filed by a state or local public agency with regard to a covered action. As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Appendix 1B of the Delta Plan regulations). Ecosystem restoration covered actions **must** include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through:

- An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and
- Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

The DSC staff, including the Science Program, looks forward to continued collaboration with SFCWA and others to support the use of best available science and the development of a robust adaptive management plan for this project.

- **Habitat restoration.** The DEIR states that the proposed project would achieve five beneficial outcomes:
 1. Increased food web productivity and export to Cache Slough Complex and beyond;
 2. Rearing habitat for outmigrating salmonids;

¹ Delta Stewardship Council. 2013. Delta Plan, Appendix B, Administrative Procedures Governing Appeals, Statutory Provisions Requiring Other Consistency Reviews, and other Forms of Review or Evaluation by the Council.

² In order to become legally binding, the Delta Plan policies must be approved as regulations by the Office of Administrative Law. Each policy is therefore referenced by both its Delta Plan policy number and its regulatory code section number. The DSC expects the regulations to go into effect no later than October 1, 2013.

3. Rearing, breeding and refuge habitats for fish and wildlife species that utilize or depend upon tidal marsh or seasonal floodplain wetlands;
4. Suitable habitat to establish diverse native plant communities, which include rare plants; and
5. Minimized potential for colonization by invasive, aquatic plants.

SFCWA should verify that these objectives are consistent with Delta Plan Policy ER P2 (23 CCR Section 5006) which calls for restoring habitats at appropriate elevations and in a manner consistent with Appendix 3, which is Section III of the California Department of Fish and Wildlife's *Draft Conservation Strategy for the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Region* (DFG 2011).

- **Nonnative invasive species.** As mentioned above, one of the project's intended outcomes is to minimized potential for colonization by invasive, aquatic plants. The DEIR describes the project's restoration design principles, including measures to keep channels free of invasive plants and prevent harboring predatory fishes, such as striped bass, largemouth and black bass. Please verify that the project will be consistent with Delta Plan Policy ER P5 (23 CCR Section 5009), which states that the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.
- **Respect local land use.** The DEIR states that the entire site is designated in the Yolo County General Plan as Agricultural Preserve. Yolo County has raised concerns about the conversion of approximately 1950 acres of farmland associated with the proposed project. Please verify that these concerns will be addressed in a manner consistent with Delta Plan Policy DP P2 (23 CCR Section 5011). This policy states that ecosystem restoration projects 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. DP P2 also calls for plans for ecosystem restoration to consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased.
- **Flood risk reduction.** The Lower Yolo Project should reduce, or at least not increase, flood risk. The Delta Plan contains two policies that may be relevant to SFCWA's consideration of this issue: Policy RR P3 restricts encroachments in floodways, and Policy RR P4 restricts encroachments in floodplains. We note that the Central Valley Flood Protection Board regulates activities in the Yolo Bypass that could impact its capacity to convey floodwaters. We commend your plan to consult with the Flood Board and the U.S. Army Corps of Engineers regarding your project design and obtain any needed encroachment permits.

We have the following additional recommendations regarding ways in which the Lower Yolo Project could further promote the achievement of the coequal goals.

- **Habitat restoration.** Delta Plan Recommendation ER R2 states that the habitat restoration project should ensure connections between areas being restored and existing habitat areas and other elements of the landscape needed for the full life cycle of the species that will benefit from the restoration project. Where possible, projects should improve water quality. Project proponents should follow best practices for mosquito abatement. In addition, ER R2 specifically recommends enhancing the ability of the Yolo Bypass to flood more frequently to provide more

opportunities for migrating fish, especially Chinook salmon, to use this system as a migration corridor that is rich in cover and food.

- **Wildlife-Friendly Farming.** Delta Plan Recommendation DP R10 calls on the Department of Fish and Game, the Delta Conservancy, and other ecosystem restoration agencies to encourage habitat enhancement and wildlife-friendly farming systems on agricultural lands to benefit both the environment and agriculture.
- **Recreation on public lands.** Delta Plan Recommendation DP R11 calls for water management and ecosystem restoration agencies to provide recreation opportunities, including visitor-serving business opportunities, at new facilities and habitat areas whenever feasible. Recommendation DP R14 calls on the Department of Fish and Wildlife, in cooperation with other public agencies, to collaborate with nonprofits, private landowners, and business partners to expand wildlife viewing, angling and hunting opportunities. Recommendation DP R16 states that public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee-top trails, and environmental education.
- **Water quality.** Delta Plan Recommendation WQ R1 states that water quality in the Delta should be maintained at a level that supports, enhances, and protects beneficial uses identified in the applicable State Water Resources Control Board or regional water quality control board water quality control plans. Delta Plan Recommendation WQ R2 states that covered actions should identify any significant impacts to water quality.
- **Protecting the Delta as a place.** The Lower Yolo Project should contribute to protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. Delta Plan Recommendation DP R17 calls for enhancing opportunities for visitor-serving businesses.

We look forward to working with you and your staff to ensure consistency of the Lower Yolo Project with the Delta Plan. If you have any questions, please contact Jessica Davenport at jdavenport@deltacouncil.ca.gov or (916) 445-2168.

Sincerely,



Cindy Messer
Deputy Executive Officer, Delta Plan

cc: Carl Wilcox, Regional Manager, DFW
Phil Isenberg, Chair, DSC
DSC Council Members
Chris Knopp, Executive Officer, DSC
Dan Ray, Chief Deputy Executive Officer, DSC
Rainer Hoenicke, Deputy Executive Officer, Science Program