



DELTA STEWARDSHIP COUNCIL

A California State Agency

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May 6, 2013

Megan Sheely
California Department of Water Resources

Traci Michel
U.S. Bureau of Reclamation

Via email: msheely@water.ca.gov
tmichel@usbr.gov

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Dear Ms. Sheely and Ms. Michel:

We have reviewed the Notice of Preparation (NOP) for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). We welcome the opportunity to provide input regarding how to ensure the consistency of the Yolo Bypass Project with the Delta Plan. Because the Delta Plan has not yet been adopted¹, our comments are based on the current draft Delta Plan (November 2012). We appreciate the opportunity to comment on the NOP and look forward to continued coordination between our agencies to further our related efforts.

As you may know, in 2009 the California Legislature created the Delta Stewardship Council (DSC) to play a synthesizing and coordinating role among the many agencies and interest groups who have a stake in the Delta's future. The DSC was also tasked with developing, adopting and implementing the Delta Plan. The Delta Plan, once adopted, will be an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals are to 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.

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 Department of Water Resources to determine whether the proposed Yolo Bypass Project is a

¹ The Delta Plan is anticipated to be adopted in May 2013.

"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."

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:

- 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.*

Early consultation with Council staff is encouraged and can assist in the determination of whether the project is a covered action.

The DSC staff appreciates this opportunity for review in order to identify some of the relevant issues. Based on the most recent draft of the Delta Plan (November 2012), our review of the NOP for the Yolo Bypass Project identified the following policies to consider in order to ensure consistency:

- **Best Available Science and Adaptive Management.** Draft Delta Policy G P1 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 A of the Draft Delta Plan). 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 A, and
 - Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.
- **Habitat restoration.** Draft Delta Plan Policy ER P2 calls for restoring habitats at appropriate elevations and in a manner consistent with the California Department of Fish and Wildlife's *Conservation Strategy for the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Region* (DFG 2011).
- **Nonnative invasive species.** Draft Delta Plan Policy ER P5 states that the potential for new introductions of, or improved habitat conditions for, nonnative invasive species must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.
- **Respect local land use.** Draft Delta Plan Policy DP P2 states that water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing or planned uses when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately

owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.

- **Flood risk reduction.** The Yolo Bypass Project should reduce, or at least not increase, flood risk. The draft Delta Plan contains two policies that are most relevant to DWR and USBR's consideration of this issue: Policy RR P3 restricts encroachments in floodways, and Policy RR P4 restricts encroachments in floodplains, including the Yolo Bypass within the legal Delta. This is intended to maintain the flood carrying capacity of this area.

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

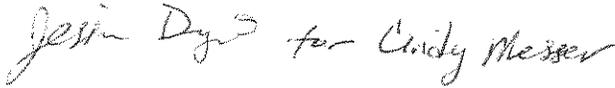
- **Habitat restoration.** Draft Delta Plan Recommendation ER R1 states that the habitat restoration project should ensure connections between areas being restored and existing habitat areas and other elements of the landscape needed for the full life cycle of the species that will benefit from the restoration project. Where possible, projects should improve water quality. Project proponents should follow best practices for mosquito abatement. In addition, ER R1 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.** Draft 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.** Draft 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 R16 states that public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee-top trails, and environmental education.
- **Water Quality.** Draft 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. Recommendation WQ R2 states that covered actions should identify any significant impacts to water quality.
- **Water supply reliability.** The Yolo Bypass Project should address the Delta Plan's goal of improving water supply reliability. The draft Delta Plan's legally binding policies and most of its recommendations related to water supply reliability are directed primarily at water suppliers and state and federal agencies. However, the NOP mentions the potential for groundwater recharge, and changes in flooding patterns in the Bypass may involve changes in reservoir operations that could positively or negatively affect water availability to users. We therefore request that these factors be included in the evaluation of alternatives.
- **Protecting the Delta as Place.** The Yolo Bypass Project should contribute to protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. Several recommendations in the draft Delta Plan provide guidance in this area. DP R8 and

Megan Sheely, Department of Water Resources
Traci Michel, U.S. Bureau of Reclamation
May 6, 2013
Page 4

DP R9 call for promoting value-added crop processing and agritourism, respectively. 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 Yolo Bypass Project with the Delta Plan. If you have any questions, please contact Jessica Davenport at jdavenport@deltacouncil.ca.gov or (916) 445-2168.

Sincerely,

A handwritten signature in cursive script that reads "Justin Dye for Cindy Messer".

Cindy Messer
Deputy Executive Officer, Delta Plan

cc: Phil Isenberg, Chair, DSC
DSC Council Members
Chris Knopp, Executive Officer
Dan Ray, Chief Deputy Executive Officer