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October 7, 2019

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Email: David.Martasian@water.ca.gov

RE: American River Watershed Common Features, Water Resource Development Act (WRDA) 2016 Project, Sacramento River East Levee Contract 1 Supplemental Environmental Assessment/Environmental Impact Report (SEA/EIR) (2019) SCH# 2005072046

Dear Mr. Martasian:

Thank you for the opportunity to review and comment on the Supplemental Environmental Assessment/Environmental Impact Report (SEA/EIR) for the American River Watershed Common Features (ARCF), Water Resource Development Act (WRDA) 2016 Project, Sacramento River East Levee Contract 1 (proposed project). The Delta Stewardship Council (Council) previously submitted two comment letters on the Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the ACRF General Reevaluation Report (GRR) Project on May 4, 2015. Thank you for acknowledging these comments in Appendix F to the Final EIS/EIR. The Council recognizes this as an effort by the United States Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (Flood Board) and Sacramento Area Flood Control Association (SAFCA) to construct levee improvements along the Sacramento River East Levee between O Street and Cosumnes River Boulevard to meet embankment and foundation stability requirements.

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). As stated in the Delta Reform Act, the State has coequal goals for the Sacramento-San Joaquin River Delta (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). 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.

"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 Action Determination and Certification of Consistency with the Delta Plan

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 its regulatory policies and recommendations incorporated in 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. (Water Code sections 85057.5 and 85225.)

Based on the project location and scope as described in the Draft SEA/EIR, the proposed project appears to meet the definition of a covered action as set forth in Water Code section 85057.5(a) because it:

1. Would occur in whole or in part within the boundaries of the Legal Delta (Water Code section 12220) or Suisun Marsh (Public Resources Code section 29101). (Water Code section 85057.5(a)(1)) This project would occur in part within the boundaries of the Legal Delta.
2. Would be carried out, approved, or funded by the State or a local public agency. (Water Code section 85057.5(a)(2)) This project would be approved and funded by the Flood Board and SAFCA which are a State and a local public agency, respectively.
3. Would have a significant impact (definition of significant impact available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/DeltaPlan_05-14-2012_Chapter2.pdf%23Page%3D24) on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. (Water Code section 85057.5(a)(4)) It appears that this project could have a significant impact on a government-sponsored flood control program to reduce risk to people, property, and State interests because it includes improvements to flood control facilities.
4. Would be covered by one or more of the regulatory policies contained in the Delta Plan (23 CCR section 5003-5015). Delta Plan regulatory policies that may apply to the proposed project are discussed in the next section, below.

It is the State or local agency approving, funding, or carrying out the project that ultimately must determine if that project is a covered action and, if so, file a Certification of Consistency with the Delta Plan prior to implementation of the project. (Water Code section 85225)

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following section describes regulatory Delta Plan policies that may apply to the proposed project based on the available information in the Draft SEA/EIR. This information is offered to assist the Flood Board in preparing documentation and environmental documents that can be used to support a certification of consistency with the Delta Plan for the proposed project. This information may also assist the Flood Board to better describe the relationship between the proposed project and the Delta Plan in the Final SEA/EIR.

General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (23 CCR section 5002) specifies what must be addressed in a Certification of Consistency by a proponent of a project that is a covered action. The following is a subset of these 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 the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O (available at: <http://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

The Draft SEA/EIR identifies potentially significant impacts in the resource areas of visual resources, air quality, vegetation and wildlife, special status species, hazards/hazardous materials, water quality, noise, recreation, transportation and circulation, and public utilities and service systems. The Draft SEA/EIR proposes numerous avoidance and minimization measures to address these impacts. The Flood Board should review the proposed mitigation measures for effectiveness and consistency with corresponding applicable and feasible Delta Plan mitigation measures for each of the identified impacts. (Please note that this regulatory requirement has been amended since the date of previous Council comment letters for this project.)

Best Available Science

Delta Plan Policy **G P1, subsection (b)(3)**, (23 CCR section 5002(b)(3)) states that covered actions 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 (available at: <http://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (23 CCR section 5001(f).) For this project, this policy generally requires that the basis of information (e.g., data, methods) used to design the project and the process used by the Flood Board to analyze project alternatives, impacts, and avoidance and mitigation measures be clearly documented to foster improved understanding and decision making.

Ecosystem Restoration Policy 4 (ER P4): Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (23 CCR section 5008) requires that a proposed action to construct new levees or substantially rehabilitate or reconstruct an existing levee in the Delta must evaluate and where feasible incorporate alternatives to increase floodplains and riparian

habitats. ER P4 specifically requires the evaluation of setback levees for projects located on specific waterways, including portions of the the Sacramento River where the proposed project is located. The proposed project, as described in the Draft SEA/EIR, would substantially rehabilitate or reconstruct the east bank of the Sacramento River in the City of Sacramento, thereby requiring an evaluation of setback levees pursuant to Policy ER P4.

A certification of consistency under ER P4 for the project would require documentation that the Flood Board evaluated and, where feasible, incorporated alternatives to increase floodplains and riparian habitats with the proposed project area, including the use of setback levees. The Council specifically noted the applicability of this requirement to the Sacramento River East Levee in both comment letters submitted on the ACRF GRR Draft EIS/EIR. While Appendix F to the Final EIS/EIR explains that most levees are adjacent to urban development with little to no available land to accommodate a setback levee, it also suggests that riparian vegetation could be maintained and expanded along some reaches. Delta Plan Policy ER P4 requires that such alternatives be evaluated and, where feasible, incorporated into levee projects. The Flood Board should document and discuss in the Final SEA/EIR, how it evaluated, and where feasible, incorporated such alternatives within the proposed project area.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 CCR section 5009) requires that the potential for new introductions of or habitat improvements for invasive, nonnative species must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem. This policy applies to projects that have a reasonable probability of introducing or improving habitat conditions for nonnative invasive species.

The Draft SEA/EIR notes that the levee improvement areas and staging areas are dominated by non-native annual grasses. Disturbance and transfer of these seed banks during construction could result in introductions of or habitat improvements for invasive, nonnative species. The Draft SEA/EIR does not analyze how the proposed project would avoid or mitigate conditions that would lead to the introduction of, or improved habitat conditions for nonnative invasive species. The Final SEA/EIR should specifically discuss how the project will avoid or mitigate these conditions for both wildlife species and terrestrial and aquatic weeds in a way that appropriately protects the ecosystem. In the event that mitigation is warranted, mitigation measures must include Mitigation Measure 4-1 in Delta Plan Appendix O (available at: <http://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>), or a substitute mitigation measure that is equally or more effective. Given the ground disturbance and presence of nonnative species at the project site, careful consideration of the establishment and growth of nonnative invasive species is imperative.

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

Delta Plan Policy **DP P2** (23 CCR section 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by requiring that water management facilities, ecosystem restoration, and flood management infrastructure, be sited to avoid or reduce

conflicts with existing uses or those described or depicted in the applicable city or county general plans when feasible. Policy DP P2 also applies if mitigation habitat is required within the Delta.

The Draft SEA/EIR states that the likely borrow sites and levee improvement areas are consistent with adopted local land use and zoning designations. The record should also document how the flood management infrastructure itself would be sited to avoid conflicts with existing land uses or those identified described or depicted in the applicable city or county general plans.

Existing land uses include residential uses, which are discussed in the Land Use section of the Draft SEA/EIR, as well as uses described in other resource areas of the supplemental document. For example, the Draft SEA/EIR confirms the ACRF GRR Final EIS/EIR finding of significant and unavoidable short-term construction impacts to recreation due to temporary closure of bicycle and recreational facilities. A certification of consistency for the proposed project should explain, and provide supporting documentation to demonstrate, how the flood management infrastructure was sited to avoid or reduce conflicts with the identified residential and recreational uses, as well as other existing uses or those identified described or depicted in the applicable city or county general plans.

The Draft SEA/EIR also states that the project area is located adjacent to established communities within the City of Sacramento, and that acquisition of levee easements across some private properties in established communities may be required (Draft SEA/EIR, page 49). The Draft SIE/EIR states that these impacts are not analyzed or discussed in detail in the Draft SEA/EIR because the refinements that are analyzed would not create impacts beyond the scope of those addressed within the ACRF GRR Final EIS/EIR. However, a certification of consistency for the proposed project would need to demonstrate that it was sited to avoid or reduce conflicts with these existing uses.

Risk Reduction Policy 1 (RR P1): Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (23 CCR section 5012) provides interim priorities to guide discretionary State investments in Delta flood risk management, including levee operation, maintenance and improvements.

The proposed project, as described in the Draft SEA/EIR includes construction of levee improvements along the Sacramento River East Levee between O Street and Cosumnes River Boulevard to meet embankment and foundation stability requirements. As described in the Draft SEA/EIR, it appears that the purpose of the project would be to decrease potential flood impacts to the people and property protected by the impacted levees, and to reduce risks of levee failure, especially related to under-seepage and levee stability. A certification of consistency for the proposed project should explain, and provide supporting documentation to demonstrate, that the project is consistent with the priorities for State investment in Delta levees and flood risk management outlined in Policy RR P1. In the Final SEA/EIR or another portion of the administrative record, the Flood Board should provide supporting information to

demonstrate how the interim priorities for State investment in Delta integrated flood management outlined in Policy RR P1 have been applied to the project.

CEQA Regulatory Setting

In addition to the specific comments above, the Final SEA/EIR Section 5.2 *State Laws, Regulations and Policies* should include a discussion of the Delta Plan and the specific applicable regulatory policy or policies for each resource section to which a Delta Plan policy is applicable.

Closing Comments

As the Flood Board proceeds with design, development, and environmental impact analysis of the project, the Council encourages the Flood Board to engage in early consultation (prior to submittal of a certification of consistency) to discuss project features as well as mitigation and minimization measures that would promote consistency of the proposed project with the Delta Plan.

Certifications of consistency can be filed on the Council's website at <https://coveredactions.deltacouncil.ca.gov/>. Council staff is available to discuss issues outlined in this letter as the Flood Board proceeds in the next stages of the project approval process. Please contact Erin Mullin at (916) 445-5459 or Erin.Mullin@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council