

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2022-05

CERTIFICATION OF THE ECOSYSTEM AMENDMENT PROGRAM ENVIRONMENTAL IMPACT REPORT; ADOPTION OF FINDINGS AND A STATEMENT OF OVERRIDING CONSIDERATIONS, MITIGATION MEASURES, AND A MITIGATION MONITORING AND REPORTING PROGRAM; AND ADOPTION OF THE ECOSYSTEM AMENDMENT

WHEREAS, in section 29702 of the Public Resources Code and as restated in section 85054 of the Water Code, the Legislature finds and declares that the basic goals of the state for the Delta include the following: Achieve the two coequal 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; and

WHEREAS, section 85020 of the Water Code states that the policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta: (a) Manage the Delta's water and environmental resources and the water resources of the state over the long term; (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place; (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem; (d) Promote statewide water conservation, water use efficiency, and sustainable water use; (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta; (f) Improve the water conveyance system and expand statewide water storage; (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection; and (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives; and

WHEREAS, pursuant to section 85300(a) of the Water Code, the Delta Stewardship Council ("Council") shall develop, adopt, and commence implementation of a Delta Plan that furthers the coequal goals; and

WHEREAS, the Council has, in consultation with the appropriate federal, state, and local agencies as required by Water Code section 85300(b), developed the Delta Plan; and

WHEREAS, on May 16, 2013 the Council prepared and certified a Program Environmental Impact Report for the Delta Plan (State Clearinghouse No. 2010122028) (“2013 PEIR”) and adopted the Delta Plan; and

WHEREAS, on May 17, 2013 the Council adopted regulations implementing the Delta Reform Act and, through those regulations, adopted California Code of Regulations, title 23, section 5001 (Cal. Code Regs., tit. 23, § 5001) implementing Delta Plan definitions, California Code of Regulations, title 23, section 5002 (Cal. Code Regs., tit. 23, § 5002) implementing Delta Plan policy G P1(b)(2) (Mitigation Measures), California Code of Regulations, title 23, section 5006 (Cal. Code Regs., tit. 23, § 5006) implementing Delta Plan policy ER P2 (Restore Habitats at Appropriate Elevations), California Code of Regulations, title 23, section 5007 (Cal. Code Regs., tit. 23, § 5007) implementing Delta Plan policy ER P3 (Protect Opportunities to Restore Habitat), and California Code of Regulations, title 23, section 5008 (Cal. Code Regs., tit. 23, § 5008) implementing Delta Plan policy ER P4 (Expand Floodplains and Riparian Habitat in Levee Projects); and

WHEREAS, following review by the Delta Science Program and external subject matter experts, and public review and comment, on February 25, 2016, the Council adopted refinements to the Delta Plan output and outcome performance measures; and

WHEREAS, on September 29, 2016 the Council adopted amended Delta Plan recommendation WR R15 and California Code of Regulations, title 23, section 5001(dd)(3) regarding single-year water transfers; and

WHEREAS, on April 26, 2018 , the Council adopted refinements to the Delta Plan output and outcome performance measures and adopted the Delta Plan Conveyance, Storage, and Operations of Both, Delta Levees Investment Strategy (which was subsequently rescinded, and has since been amended and is in the rulemaking process); and Performance Measures Amendments; and

WHEREAS, on May 30, 2019 the Council amended California Code of Regulations, title 23, section 5002 (“Cal. Code Regs., tit. 23, § 5003”) to add a new mitigation measure identified in the 2018 PEIR and adopted and incorporated into the Delta Plan; and

WHEREAS, the Delta Plan requires revisions to address changes in circumstances and conditions in the Delta, including a shift by State and federal agencies away from the Bay Delta Conservation Plan, and provide a more comprehensive

approach to ecosystem protection, restoration, and enhancement in the Delta; and

WHEREAS, to address this shift, staff presented preliminary proposed revisions to Chapter 4 of the Delta Plan to the Council for feedback at the April 2019 and June 2019 Council meetings and released a subsequent Preliminary Public Review Draft in November 2019 and solicited agency, public, and Delta Independent Science Board (Delta ISB) comments; and

WHEREAS, these comments were incorporated into the May 2020 Draft of proposed amendment to Chapter 4 of the Delta Plan (May 2020 Draft), and at its May 1, 2020, public meeting, the Council authorized the May 2020 Draft as the proposed project for environmental review under CEQA; and

WHEREAS, the proposed amendment consists of amendments to Chapter 4 (Protect, Restore, and Enhance the Delta Ecosystem) of the Delta Plan ("Ecosystem Amendment or "Project) and revisions to previously adopted mitigation measures to reflect updated formatting and current standards, as relevant, as described in Section 3.4 of the Draft PEIR as revised by the Revisions to the Draft PEIR in Sections 2.1 and 2.2 of the Final PEIR ; and

WHEREAS, the Council, as lead agency under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., has prepared the Final Ecosystem Amendment Program Environmental Impact Report (State Clearinghouse No. 202050219) ("PEIR") (the entire Final PEIR is Exhibit A to this Resolution), which is a program-level EIR pursuant to section 15168 of the Guidelines for implementation of the California Environmental Quality Act ("State CEQA Guidelines"), California Code of Regulations, title 14, section 15000 et seq., and consists of the November 2021 Draft Ecosystem Amendment Program EIR ("Draft PEIR") and the June 2022 Final Ecosystem Amendment PEIR; and

WHEREAS, pursuant to section 85021 of the Water Code, the Ecosystem Amendment furthers the statewide policy to reduce reliance on the Delta in meeting the state's future water supply needs through regional self-reliance; and

WHEREAS, the Project is consistent with specific statutory content requirements for the Delta Plan found in sections 85302(c) through 85302(e) and 85303 through 85308 of the Water Code; and

WHEREAS, on May 11, 2020, the Council filed a Notice of Preparation ("NOP") of the PEIR with the State Clearinghouse in the Governor's Office of Planning and Research, and distributed copies of the NOP to approximately 90 recipients by mail

and 26 agencies through the State Clearinghouse; sent notifications to Trustee agencies, Coastal Zone Management Program, Council listserv, and an additional 280 contacts to additional interested parties via email; distributed a notice of the NOP in the Delta ENews and Maven's Notebook newsletters; on May 15, 2020 sent an Assembly Bill (AB) 52 notice by email and FedEx to tribes that requested notification of all Council activities; and the Council requested a list of California Native American tribes from the Native American Heritage Commission and sent the NOP by email to 120 contacts on May 15, 2020; and

WHEREAS, the NOP provided notice of a 60-day comment period from May 11, 2020 through July 10, 2020; and

WHEREAS, the Council held a virtual public scoping meeting on May 28, 2020 to obtain the views of agencies and the public on the scope and content of the PEIR prior to publishing the Draft PEIR; and

WHEREAS, the Council submitted the Draft PEIR to the State Clearinghouse and issued it for public review and comment for 64 days beginning on September 27, 2021 and ending on November 30, 2021; and

WHEREAS, the Council sent out a Notice of Completion and Notice of Availability of the Draft PEIR to AB 52 and interested tribes by email and FedEx on September 27, 2021, and two tribes requested consultation; the Council consulted these tribes by videoconference between November 2021 and January 2022; and

WHEREAS, during the comment period on the Draft PEIR, the Council held a public workshop on November 18, 2021 for the purpose of taking public comment on the Draft PEIR; and

WHEREAS, agencies, organizations, and members of the public submitted 19 comment letters and emails containing written comments on the Draft PEIR in addition to participating in the Council workshop to provide comments on the Draft PEIR; and

WHEREAS, Section 3 of the Final PEIR provides responses to written and oral comments received during the comment period on the Draft EIR; and

WHEREAS, pursuant to State CEQA Guidelines section 15091, a lead agency may only approve or carry out a project for which an EIR identifies one or more significant environmental effects if it makes one or more of the following findings

(State CEQA Guidelines section 15091(a)):

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR;

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency;

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR; and

WHEREAS, in addition to the findings required by CEQA Guidelines section 15091, if the Ecosystem Amendment would result in significant and unavoidable impacts, as part of the findings, the Council must also adopt a Statement of Overriding Considerations (SOC) as required by CEQA Guidelines sections 15093, to explain why the benefits of the proposed project outweigh its unavoidable significant environmental effects; and

WHEREAS, the Ecosystem Amendment would result in significant and unavoidable impacts and therefore, staff has prepared CEQA Findings and Statement of Overriding Considerations for the Ecosystem Amendment as required by CEQA Guidelines section 15091 and 15093, which is Exhibit B to this Resolution; and

WHEREAS, the Final PEIR has been presented to the Council and, prior to taking any action regarding the adoption of the Ecosystem Amendment, the Council has exercised its independent judgment, and has reviewed and considered the information therein, the Findings and Statement of Overriding Considerations, along with all staff reports pertaining to the Ecosystem Amendment, all other pertinent documents, and all written and oral statements received by the Council prior to or at its public hearing on the Ecosystem Amendment and the PEIR; and

WHEREAS, the Mitigation Monitoring and Reporting Program (MMRP), which is required by CEQA to ensure implementation of the mitigation measures, was amended. An MMRP identifies each mitigation measure that has been adopted, the party responsible for implementation, the monitoring schedule, and who will perform the monitoring functions. Given that the Council will not be proposing projects to

implement the Delta Plan, the Council's monitoring role will be carried out through the covered action certification of consistency process and 23 CCR § 5002(b)(2); and

WHEREAS, the Ecosystem Amendment, including all of the new and revised mitigation measures identified in the Final PEIR and in the Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, attached hereto as Exhibits A, B, and C to this Resolution, will be adopted and incorporated into the Delta Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.
2. The Council hereby certifies that the Final PEIR, attached hereto and incorporated herein as Exhibit A to this Resolution, for the Ecosystem Amendment has been completed in compliance with the California Environmental Quality Act, Public Resources Code sections 21000 et seq., and reflects the independent judgment and analysis of the Council.
3. The Council hereby adopts the Findings and Statement of Overriding Considerations, attached hereto and incorporated herein as Exhibit B to this Resolution, for the Ecosystem Amendment.
4. The Council hereby adopts and incorporates into the Delta Plan the Ecosystem Amendment, consisting of revisions to Delta Plan Chapter 4, *Protect, Restore and Enhance the Delta Ecosystem* (Ecosystem Amendment) as presented in Appendix A to the Final PEIR, and including all of the new and revised mitigation measures identified in the Draft and Final PEIR, the Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, attached hereto as Exhibits A, B, and C to this Resolution.
5. The Council hereby adopts the Mitigation Monitoring and Reporting Program for the Project, attached hereto and incorporated herein as Exhibit C to this Resolution; and
6. The Council hereby directs Council staff to initiate rulemaking for the regulatory Delta Plan policies, including mitigation measures, that are amended or added into the Delta Plan as part of the Ecosystem Amendment.

7. The Council hereby directs and authorizes the Executive Officer, or delegee, to make any non-substantive modifications to the text of Exhibit A to this Resolution which are deemed necessary to continue with the rulemaking process, and to inform the Council of any such changes, except that strictly typographical corrections do not need to be reported to the Council, and to specify effective dates of regulations ER P2, ER P3, and ER P4 consistent with the Final PEIR so that covered actions for which a NOP, Negative Declaration (ND), or Mitigated Negative Declaration (MND) has been issued prior to the regulatory effective date would be exempt from the amended ER P2, ER P3, and ER P4 for a period of two years following the effective date of the amended regulation.
8. The Council directs and authorizes the Executive Officer or her delegee to exercise their discretion to make changes required by the Office of Administrative Law in order to comply with requirements of the Administrative Procedures Act in order to achieve any of the forgoing and effect the intent of this Resolution, and inform the Council of any such changes.
9. The Council hereby directs and authorizes the Executive Officer, or delegee, to correct any errata or make any changes identified by the Council at its June 23, 2022, meeting and to make such other non-substantive, technical changes and formatting edits identified subsequent to that meeting.
10. The Council hereby directs and authorizes the Executive Officer, or delegee, to take such steps as are necessary to comply with the requirements of the California Environmental Quality Act, including filing of the Notice of Determination, concerning the PEIR and to effect the intent of this Resolution.

CERTIFICATION

On a motion by Councilmember _____, seconded by Councilmember _____, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by the following vote at a regular meeting of the Delta Stewardship Council on June 23, 2022.

Damrell _____

Lee _____

Madueño _____

Mehranian _____

Nottoli _____

Smith _____

Zingale _____

Dated: June 23, 2022

Rebecca Barger

Clerk of the Board of the Delta Stewardship Council