



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

September 8, 2022

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**RE: Comments on Notice of Preparation of a Program
Environmental Impact Report for the Yolo Bypass Cache Slough
Partnership Multibenefit Program Master Plan, SCH #**

Dear Megan Giglini,

Thank you for the opportunity to review and comment on the Yolo Bypass Cache Slough Partnership Multibenefit Program Master Plan, Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR). The Delta Stewardship Council (Council) understands that the objective of the Yolo Bypass Cache Slough Partnership Multibenefit Program Master Plan (“proposed program”), as described in the NOP, is to support implementation of a suite of related projects that collectively provide essential flood conveyance capacity while improving resilience, reliability, and adaptability to climate change; enhance aquatic and terrestrial species habitats; and preserve agricultural land and economic values. The Council also understands that the proposed program will guide project planning and implementation in a manner that supports the six priorities of the Yolo Bypass

Cache Slough Partnership, including flood risk management, water supply assurances, habitat enhancement, agricultural sustainability, water quality enhancement, and recreation. Lastly, it appears that the proposed program will include a programmatic approach to U.S. Army Corps section 408 permitting compliance. We are supportive of such novel approaches that could potentially streamline projects in the Delta and look forward to learning more.

The Council is an independent state agency 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 providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that 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 Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300(a).)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the proposed program's location and scope, as provided in the NOP, the proposed program appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is 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. The scope of the proposed program includes portions that overlap with the legal Delta.

(2) Will be carried out, approved, or funded by a State or a local public agency. The plan will be carried out by the Central Valley Flood Protection Board (CVFPB), the lead agency under the California Environmental Quality Act (CEQA), and the Department of Water Resources in coordination with other agencies in the Yolo Bypass Cache Slough Partnership (consisting of 15 federal, State, and local agencies).

(3) Is covered by one of the provisions of the Delta Plan. Delta Plan regulatory policies that may apply to the program are discussed below.

And

(4) Will have a significant impact on 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. The proposed program would have a significant impact on both of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The proposed program would also have a significant impact on a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta.

The State or local agency approving, funding, or carrying out the project must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to initiating project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the proposed program based on the available information in the NOP. Not all Delta

Plan policies that the project may be subject to are listed below. This information is offered to assist the CVFPB in preparing environmental documents that could be used to support a future Certification of Consistency for the proposed program.¹

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency for a project that is a covered action. If a future Certification of Consistency is prepared for the project, it must include detailed findings that address each of the following requirements:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 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 and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the proposed program PEIR identifies potentially significant impacts that require mitigation, CVFPB should review Delta Plan Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best

¹ Note that the Ecosystem Restoration Policies identified in this letter are the policies currently in effect. The Council recently amended several Delta Plan ecosystem restoration policies and mitigation measures. The amended policies and mitigation measures will not be effective until completion of a rulemaking process. The recent Delta Plan amendments also include a provision that covered actions with an NOP issued prior to the effective date of the amended policies will be exempt from these changes for a period of two years. If the proposed project submits a certification of consistency after this period, then it may be subject to the amended policies.

available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs, tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). In a future Certification of Consistency for the project, CVFPB should identify how the proposed program was informed by best available science.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 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 (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan. A future Certification of Consistency for the proposed program should include an adaptive management plan consistent with the framework established in Appendix 1B.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires that the State Water Resources Control Board’s (Water Board) Bay Delta Water Quality Control Plan flow objectives be used to determine consistency with the Delta Plan for proposed actions that could significantly affect flow in the Delta. If, and when, the flow objectives are revised by the State Water Resources Control Board, the revised flow objectives shall be used to determine consistency with the Delta Plan. The PEIR should evaluate the potential for the proposed program to significantly alter flow. If flow is likely to significantly be altered, CVFPB should include information in the PEIR supporting compliance with current Water Board flow objectives.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration to be carried out consistent with Appendix 3 (available within Appendix B:

<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>.

Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

As it relates to projects to be evaluated as part of the proposed program, the PEIR should identify the elevations of restoration project sites in relation to current water levels and projected sea level rise based on best available science, and document how the proposed habitat restoration actions are appropriate for these elevations.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

The Delta Plan designates six priority habitat restoration areas (PHRAs) that have the greatest potential for large-scale habitat restoration (Delta Plan, Chapter 4, p. 136-138). Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated in these areas (depicted in Appendix 5:

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>). The proposed program's area includes two PHRAs: Cache Slough and Yolo Bypass. The PEIR should analyze whether the proposed program would preclude habitat restoration in these PHRAs.

Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008) requires levee projects to evaluate and, where feasible incorporate, alternatives to increase floodplains and riparian habitats. Evaluation of setback levees in the Delta shall be required only in the following areas (shown in Appendix 8): (1) The Sacramento River between Freeport and Walnut Grove, the San Joaquin River from the Delta boundary to Mossdale, Paradise Cut, Steamboat Slough, Sutter Slough; and the North and South Forks of the Mokelumne River, and (2) Urban levee improvement projects in the cities of West Sacramento and Sacramento. The PEIR should document how CVFPB evaluated the feasibility of incorporating floodplain and riparian habitats into the design and construction of levee projects, and where feasible include setback levees to increase floodplains and riparian habitat. For sites that may be determined in the future, the PEIR should describe the approach to how these requirements will be considered.

Delta Plan Policy ER P5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009) requires that covered actions fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass in a way that appropriately protects the ecosystem.

The PEIR should acknowledge ER P5 in the Aquatic and Terrestrial Biological Resources sections of the document and describe how the program will address terrestrial and aquatic nonnative invasive species. Further, the PEIR should analyze how the projects included in the Master Plan will avoid or mitigate for conditions that would lead to establishment of nonnative invasive species.

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

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing or planned future uses when feasible, considering comments from local agencies and the Delta Protection Commission.

According to the NOP, the projects to be evaluated in the Master Plan include a variety of sites identified for ecosystem restoration, flood risk reduction projects such as levee improvements, setback levees, and weir expansions, and a variety of water management facility improvements, such as pump station and canal improvements. The PEIR's Land Use and Planning Section should acknowledge DP P2 in the regulatory setting and describe how projects to be evaluated in the Master Plan will avoid or reduce conflicts with existing or planned future uses.

Delta Plan Policy RR P1: Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance, and improvements. The proposed program seeks to expand the flood conveyance capacity of the Yolo Bypass Cache Slough system, including investments in measures to meet existing flood risk management standards, and

to establish a regulatory and funding framework to enable effective, affordable, and sustainable long-term operations and maintenance of this flood risk management system that accommodates other partnership goals. Projects to be evaluated in the Master Plan include a variety of projects related to levees and flood risk reduction. The PEIR should document how the Master Plan has incorporated the prioritization of the state investments in Delta levees and risk reduction.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) states that no encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety. The PEIR's Hydrology and Water Quality section should acknowledge RR P3 in the regulatory setting, and should identify whether projects evaluated in the Master Plan would encroach on any floodways. A future Certification of Consistency should identify if the proposed program is consistent with Policy RR P3.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain in certain areas within the legal Delta, including the Yolo Bypass, unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions. CVFPB should acknowledge RR P4 in the regulatory setting for the Hydrology and Water Quality section of the PEIR. The PEIR should analyze the impact of the projects evaluated in the Master Plan on floodplain values and functions, and a future Certification of Consistency should identify if the proposed program is consistent with Policy RR P4.

CLOSING COMMENTS

As CVFPB proceeds with development of the Master Plan and the environmental impact analysis, the Council invites CVFPB to continue to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss program features and mitigation measures that would promote consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification

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process can be found on the Council website,
<https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss
issues outlined in this letter as CVFPB proceeds with its project and approval
processes. Please contact Daniel Constable, Environmental Program Manager, at
(916) 902-6470 or Daniel.Constable@deltacouncil.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council