



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

March 6, 2026

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RE: Comments on the Hotchkiss Tract Levee Rehabilitation Project, SCH# 2026010778

Dear Mike Alvarez:

Thank you for the opportunity to review and comment on the Hotchkiss Tract Levee Rehabilitation Project (levee rehabilitation project). The Delta Stewardship Council (Council) recognizes the objective of Reclamation District 799 (RD 799) to rehabilitate and improve segments of the existing levee along Dutch Slough to achieve the applicable rural levee standard identified in Bulletin 192-82, including levee raising, widening, slope improvements, and construction of a waterside tidal marsh bench. The Council appreciates RD 799's efforts to advance the levee rehabilitation project that both improves flood protection and incorporates habitat enhancement and vegetation management features consistent with a multi-benefit approach in the Delta.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; 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 Delta and Suisun Marsh (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. (Wat. Code, § 85054.) 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.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, sections 5001 et seq. 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, 85225.10.) 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 initiation of the implementation of the action. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the levee rehabilitation project location and scope, the proposed levee rehabilitation project may meet the definition of a covered action. Water Code section 85057.5, subdivision (a), states that a covered action is a plan, program, or project, as defined pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA) in Public Resources Code section 21065, 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 a state or a local public agency*
- (3) Is covered by one of the provisions of the Delta Plan*
- (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 Delta¹*

¹ For purposes of Water Code section 85057.5, subdivision (a)(4), “significant impact” means “a substantial positive or negative impact 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, that is directly or indirectly caused by a project on its own

As the local public agency approving, funding, or carrying out the levee rehabilitation project, RD 799 must determine if this project is a covered action (Cal. Code Regs., tit. 23, §§ 5001, subds. (o)(3), subd. (mm).) and, if so, file a certification of consistency with the Council prior to implementation. (Wat. Code, § 85225.)

Delta Plan Policies that may apply

The following section describes regulatory Delta Plan policies that may cover the levee rehabilitation project. (Wat. Code § 85057.5, subd. (a)(1).) This information could be used to support a future filing of a certification of consistency with the Council.

Delta Plan Policy 2 – Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006.) requires the disclosure of specified information to establish the connection between anticipating sea level rise and planning for how expected changes in the tidal range will affect the ability of restored habitats in the future to provide maximum benefits. The levee rehabilitation project proposes the construction of a tidal marsh bench along the waterside toe of the levee. Based on this policy's requirements, RD 799 staff should ensure a certification of consistency contains an analysis of how proposed habitat elevations were selected in relation to current water levels, projected sea level rise, and anticipated vegetation communities.

Delta Plan 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 that increase floodplains and riparian habitats. Because the levee rehabilitation project involves the rehabilitation and modification of an existing levee, a certification of consistency should document how opportunities to incorporate or enhance floodplain and riparian habitat functions were considered within engineering and operational constraints.

or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects." (Cal. Code Regs., tit. 23, § 5001, subd. (ss).)

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.

In a future certification of consistency, RD 799 should describe efforts to fully consider and avoid the introduction of, or the improvement of habitat conditions for, nonnative invasive species during and after construction, including, but not limited to, emerging species of concern, such as nutria and golden mussel. In the event that mitigation is warranted, mitigation and minimization measures should include Mitigation Measure 4-1(e) (available in Delta Plan Appendix O <https://deltacouncil.ca.gov/pdf/delta-plan/2025-11-12-appendix-o.pdf>) or equally or more effective measures.

Delta as Place Policy 2 – Respect Local Land Use

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5010.) requires new residential, commercial, and industrial developments to be limited to specified areas. Although the levee rehabilitation project involves the rehabilitation of an existing levee rather than the construction of a new flood facility, certain elements, such as levee widening, construction staging, and long-term maintenance access, may interact with surrounding agricultural uses. Based on this policy's requirements, RD 799 staff should ensure a certification of consistency contains an analysis of how the levee rehabilitation project design avoids or reduces conflicts with existing land uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible.

Delta Plan Policy G P1 – Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002.) specifies what is required to be addressed in a certification of consistency for a covered action. The following is a subset of policy requirements that a covered action is required to fulfill to be considered consistent with the Delta Plan.

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) requires covered actions not exempt from CEQA to include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended June 23, 2022, 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 regulations as Appendix O (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2025-11-12-appendix-o.pdf>).

Based on this policy's requirements, RD 799 staff should ensure a certification of consistency identifies which Appendix O mitigation measures apply and document how the proposed mitigation meets or exceeds the effectiveness of the Appendix O mitigation measures² or explain why implementation is not feasible, and include that analysis in the record supporting the certification of consistency.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).) states that covered actions are required to document the use of best available science as relevant to the purpose and nature of the project. The Delta Plan regulations define best available science as "the best scientific information and data for informing management and policy decisions." (Cal. Code Regs, tit. 23, § 5001, subd. (g).) Best available science is also required to be consistent with the guidelines and criteria in Delta Plan [Appendix 1A](#). (Cal. Code Regs, tit. 23, div. 6, ch. 2, app. 1A.)

Based on this policy's requirements, RD 799 staff should ensure a certification of consistency contains an analysis of how the levee rehabilitation project's levee design and habitat and vegetation components rely on best available scientific information consistent with Appendix 1A.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4).) requires that ecosystem restoration and water management covered actions

² Please note specific mitigation requirements related to nonnative invasive species described under Ecosystem Restoration Policy 5 (Cal. Code Regs., tit. 23, § 5009; ER P5) above.

include adequate provisions for the continued implementation of adaptive management, appropriate to the scope of the covered action. This requirement is satisfied through both of the following:

(1) The development of an adaptive management plan that is consistent with the framework described in Appendix 1B (Cal. Code Regs, tit. 23, div. 6, ch. 2, app. 1B.) and also in the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>)

(2) Documentation of adequate resources to implement the proposed adaptive management plan

The habitat enhancement and vegetation management components of the levee rehabilitation project would require the preparation of an adaptive management plan. Please visit the Interagency Adaptive Management Coordination webpage (<https://deltacouncil.ca.gov/delta-science-program/interagency-adaptive-management-coordination>) for resources to help create a more effective adaptive management plan, including, among others, a checklist of what to include, examples from other plans, and monitoring resources.

CLOSING COMMENTS

If RD 799 determines the levee rehabilitation project is a covered action, a certification of consistency must be filed prior to implementation. The Council encourages early consultation with Council staff to discuss levee rehabilitation project features and mitigation measures that would support consistency with the Delta Plan. More information on covered actions, early consultation, and the certification process can be found on the Council website <https://deltacouncil.ca.gov/covered-actions/>.

Council staff are available to discuss the issues outlined in this letter as RD 799 proceeds with levee rehabilitation project development and approval. Please contact Eva Bush at eva.bush@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson
Deputy Executive Officer