



DELTA STEWARDSHIP COUNCIL
A California State Agency

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August 22, 2019

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Reclamation District No. 3
P.O. Box 1011
Walnut Grove, CA 95690

Executive Officer
Jessica R. Pearson

RE: Grand Island Levee Seepage Cutoff Wall Initial Study / Mitigated Negative Declaration (IS/MND) (2019) SCH# 2019079082

Dear Mr. Wilson:

Thank you for the opportunity to review and comment on the Initial Study / Mitigated Negative Declaration (Draft IS/MND) for the Grand Island Levee Seepage Cutoff Wall (proposed project). The Delta Stewardship Council (Council) recognizes this as an effort by Reclamation District No. 3 (RD 3) to remediate seepage along Steamboat Slough. Council staff understand that the proposed project would install approximately 1,250 feet of cutoff wall on the left river bank of Steamboat Slough on Grand Island. The proposed work would include installation of a slurry or cutoff wall necessary to protect federal project levees compromised by seepage problems.

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). The Delta Reform Act charges the Council with furthering California's coequal goals of achieving a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem, while protecting and enhancing the Delta's cultural, recreational, natural resource, and agricultural values. (Cal. Water Code section 85054). These goals are to be achieved through implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013, and are set forth in Title 23 of the California Code of Regulations.

Covered Action Determination and Certification of Consistency with the Delta Plan

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as

“Covered actions.” (Cal. Water Code section 85022(a) and 85057.5.) The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) 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. (Cal. Water Code section 85057.5 and 85225.) Water Code section 85057.5(a) provides a four-part test for meeting the definition of a covered action.

Based on the project location and scope as described in the Draft IS/MND, the proposed project appears to meet the definition of a covered action 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). (Cal. 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. (Cal. Water Code section 85057.5(a)(2).) This project would be carried out by RD 3, which is a local public agency.
3. Would have a **significant 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. (Cal Water Code section 85057.5(a)(4)) It appears that this project would 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 below.

The Delta Reform Act requires the State or local agency that proposes to undertake a covered action to file a certification of consistency with the Delta Plan prior to initiation of implementation of the project. (Cal. 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 IS/MND. This information is offered to assist RD 3 in preparing documentation and environmental documents that can be used to support the project’s eventual certification of consistency with the Delta Plan. This information may also assist RD 3 to better describe the relationship between the proposed project and the Delta Plan in the Final IS/MND.

General Policy 1 (G P1): Detailed Finding 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 filed by a project proponent for a project that is a covered action. The following is a subset of G P1 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 CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective. Mitigation measures in the Delta Plan's Mitigation and Monitoring Reporting Program (Delta Plan MMRP) are available at: <http://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>

The Draft IS/MND for the proposed project identifies potentially significant impacts for biological resources, hazards/hazardous materials, and hydrology/water quality. The Draft IS/MND proposes numerous avoidance and minimization measures to address these impacts. The proposed mitigation measures in the Draft IS/MND should be equally as effective as, or more effective than, applicable Delta Plan mitigation measures in the Delta Plan MMRP.

Best Available Science

Delta Plan Policy **G P1, subsection (b)(3)**, (23 CCR section 5002(b)(3)) requires covered actions to document use of best available science as relevant to the purpose and nature of the project.

Best available science is defined in the Delta Plan as the best scientific information and data for informing management and policy decisions, which must be consistent with the guidelines and criteria found in Appendix 1A of the Delta Plan, available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>. (23 CCR section 5001(f).) Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. This policy generally requires the lead agency to clearly document and communicate the process for analyzing project alternatives, impacts, and avoidance and mitigation measures of proposed projects, in order to foster improved understanding and decision making. The Delta Science Program staff is available to answer any questions regarding the use of best available science and documentation of best available science used in determination of consistency with the Delta Plan.

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. Further, ER P4 requires the evaluation of setback levees for projects located on specific waterways, including Steamboat Slough.

The proposed project as described in the Draft IS/MND would substantially rehabilitate or reconstruct the left river bank of Steamboat Slough. A certification of consistency for the project would require documentation that RD 3 has evaluated and, where feasible, incorporated alternatives to increase floodplains and riparian habitats with the proposed project area, including the use of setback levees. RD 3 should document, or discuss in the Final IS/MND, how it has evaluated, and where feasible, incorporated alternatives to increase floodplains and riparian habitats within the proposed project area, including the use of setback levees.

Ecosystem Restoration Policy 5 (ER P5): Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 CCR section 5009) requires levee projects to fully consider and avoid or mitigate, in a way that appropriately protects the ecosystem, the potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass.

The Final IS/MND should specifically discuss how the project will address both nonnative wildlife species as well as terrestrial weeds, and analyze how the project will avoid or mitigate conditions that would lead to the introduction of, or improved habitat conditions for, nonnative invasive species. In the event that mitigation is warranted, mitigation measures should be consistent with Mitigation Measure 4-1 in the Delta Plan MMRP, which is available at: <http://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf> . Given the ground disturbance and presence of nonnative invasive species at the project site, careful consideration of the establishment and growth of nonnative invasive species is imperative.

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

Delta Plan Policy **RR P1** (23 Cal. Code Regs. 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 IS/MND would remediate seepage on the left bank levee of Steamboat Slough. As described in the Draft IS/MND, it also appears that the project would help avoid adverse flood-related impacts, and would contribute to reduced risk

by decreasing potential flood impacts to the people and property protected by the impacted levees. The Hydrology and Water Quality section of the Final IS/MND should describe how the priorities for State investment in Delta integrated flood management outlined in RR P1 have been applied to the project.

CEQA Regulatory Setting

In addition to the specific comments above, the Final IS/MND Regulatory Setting 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 RD 3 proceeds with design, development, and environmental impact analysis of the project, the Council encourages RD 3 to engage Council staff in early consultation (prior to submittal of a certification of consistency) to discuss project features and minimization measures that would promote consistency 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 RD 3 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,

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