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DELTA STEWARDSHIP COUNCIL

A California State Agency

December 17, 2019

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Mr. Glenn Gebhardt, City Engineer
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

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Sent via email: website_pwk@ci.lathrop.ca.us

RE: Comments on Notice of Preparation of a Draft Environmental Impact Report for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project, SCH# 2019110339

Dear Mr. Gebhardt:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project (CTF). According to the NOP, the proposed project is to repurpose approximately 1.1 miles of existing recycled water pipeline or construct approximately 1.7 miles of new effluent pipeline within City rights-of-way, and install a new river side-bank or bottom-diffuser outfall to discharge excess tertiary-treated, disinfected, and dechlorinated effluent from the CTF to the San Joaquin River. This project would allow the City to convert land currently used to store treated effluent to urban development consistent with the City's General Plan. Additionally, based on discussions from the public scoping meeting, the City will be applying for permit(s) from the State Water Resources Control Board regarding discharges into the San Joaquin River.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act (Wat. Code, §§ 85000 *et seq.*)). As stated in the Delta Reform Act, the State has coequal goals for the 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 (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. The Delta Plan identifies 14 regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015.

"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

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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”. 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).

Based on the project location and scope, as provided in the NOP, the proposed project appears to meet the definition of a covered action. However, 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. Water Code section 85057.5 subdivision (a) provides a four-part test defining what activities would be considered covered actions.

- (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; 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 project appears to meet the criteria of a covered action because:

1. The CTF would occur in whole within the boundary of the Delta. According to the project location map in the NOP, the CTF is located within the Secondary Zone of the Delta;
2. The NOP identifies that the project would be carried out, approved or funded by a local public agency, the City of Lathrop.
3. The NOP describes activities that may be covered by Delta Plan Policies as described below; and
4. The activities described in the NOP indicate that the project may have a significant positive or negative impact on both providing for a more reliable water supply and the protection, restoration, and enhancement of the Delta ecosystem.

As the City proceeds with design, development, and environmental impact analysis of the project, we invite you to engage Council staff in early consultation to discuss project features and mitigation measures that would promote consistency with the Delta Plan. More information on covered actions, early consultation, and the certification process can be found on the Council website: <http://deltacouncil.ca.gov/delta-plan/covered-actions>.

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 NOP. This information is offered to assist the City to prepare certified 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 City to describe the Delta Reform Act and the Council in the regulatory setting of the EIR, and the relationship between the proposed project and Delta Plan policies in topical sections of the EIR.

General Policy 1: Detailed Finding 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 filed by a state or local agency with regard to a covered action. The certification of consistency must include detailed findings that address the requirements in Delta Plan Policy **G P1**, including the following:

- **Mitigation Measures**

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan Program EIR (unless the measures are within the exclusive jurisdiction of another agency) or substitute mitigation measures that the agency finds are equally or more effective. For your reference, the mitigation measures adopted and incorporated into the Delta Plan can be found in the Delta Plan's Mitigation and Monitoring Report Program (Delta Plan MMRP), which is available at:

<http://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the CTF EIR identifies significant impacts that require mitigation, the City should review proposed mitigation measures for effectiveness and consistency with corresponding applicable and feasible Delta Plan mitigation measures for each of the identified impacts consistent with Delta Plan Policy **G P1**.

- **Best Available Science**

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002(b)(3)) requires that all covered actions must document use of best available science 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 (<http://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

- **Adaptive Management**

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

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appropriate to the scope of the action, to assure continued implementation of adaptive management. This requirement is satisfied through (1) an adaptive management plan that describes the approach to be taken consistent with the adaptive management framework described in Appendix 1 B of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>); and (2) documentation of access to adequate resources and delineated authority by the entity responsible to implement the proposed adaptive management process.

At the public scoping meeting held for this project on December 4, 2019, there was discussion that the City may consider selling treated effluent to other parties to help supplement needs (e.g., meet State Groundwater Management Act requirements), which may lower the amount of water discharged to the San Joaquin River in the future. Please add this potential to the EIR project description if this is an intended component of the project. If the City intends to sell treated effluent for these purposes, the CTF may be considered a water management project subject to this Delta Plan policy.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs, tit. 23, § 5005) requires the State Water Resources Control Board's Bay-Delta Water Quality Control Plan flow objectives to be used to determine consistency with the Delta Plan.

In the Biological Resources and Hydrology and Water Quality sections of the EIR, the City should analyze and document how the CTF may affect or alter Delta flows subject to the Bay-Delta Water Quality Control Plan flow objectives. Potential treated effluent releases may impact listed species and the ability to meet flow objectives under different hydrologic conditions and water type years. In addition, the State Water Resources Control Board adopted, and the State Office of Administrative Law recently approved, Bay-Delta Plan amendments establishing revised flow objectives for the Lower San Joaquin River and revised southern Delta salinity standards. The objectives and standards in these amendments are therefore relevant to ER P1. The City should consider these amendments and potential impacts of the project on Delta flow objectives and salinity standards in the EIR.

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

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

In the Biological Resources section of the EIR, the City should consider how the introduction of treated effluent water and the potential development of a new or refurbished outfall in the San Joaquin River could induce invasive nonnative species. The analysis may consider how these project aspects could provide habitat for invasive nonnative species (both aquatic and terrestrial) or provide an increase or concentration of nutrients that could develop conditions

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beneficial to invasive nonnative species. Water temperature impacts should also be considered. In the event that mitigation is warranted, mitigation and minimization measures should be consistent with Delta Plan Mitigation Measure 4-1, as described in the Delta Plan Mitigation Monitoring and Reporting Program (<http://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

Delta as Place Policy 1: Locate New Urban Development Wisely

Delta Plan Policy **DP P1** (23 Cal. Code Regs., tit. 23, § 5010) places certain limits on new urban development within the Delta. As it applies to the proposed project, Policy DP P1 states that new residential, commercial, or industrial development must be limited to areas that city or county general plans designate for residential, commercial, and industrial development in cities or their spheres of influence as of the date of the Delta Plan's adoption (May 16, 2013).

The NOP project description identifies that "currently, the City has 10 storage ponds, one percolation pond and approximately 297 acres of urban and agricultural irrigation area for storage and use of treated effluent. However, all this land is designated under the City General Plan for some form of urban development and keeping this land for effluent storage and disposal precludes the ability of the City to fulfill its General Plan land use vision." (NOP, p. 3) Please include a map in the EIR depicting each area currently used for effluent storage, use, and percolation along with its intended urban development use, and identify whether all such areas were designated for residential, commercial, and industrial development in the City of Lathrop General Plan that was in effect on May 16, 2013. Also, please analyze the potential of the improved CTF to induce new development in the Delta that was not accounted for in applicable city or county general plans as of May 16, 2013 in the growth inducement and cumulative impacts discussions in the EIR.

CEQA Regulatory Setting

Please include a description of the Delta Plan and reference to the specific applicable policies in the regulatory setting of the EIR for each resource section in which a Delta Plan policy is applicable.

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Closing Comments

We invite the City to engage with Council staff in early consultation to collaborate and discuss project features and mitigation measures as you proceed with design, development, and environmental impact analysis of the project. Please contact Anthony Navasero at (916) 445-5471 Anthony.Navasero@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