



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

February 1, 2021

Mehdi Mizani
Department of Water Resources
Floodplain Management, Protection, and Risk Awareness Program
3464 El Camino Avenue, Suite 200
Sacramento CA, 95821

Sent via FMPRA@water.ca.gov.

RE: Comments on Proposition 68 Draft Guidelines for the Flood Management, Protection, and Risk Awareness Program

Dear Mehdi Mizani:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the Proposition 68 Draft Guidelines (Guidelines) for the Flood Management, Protection, and Risk Awareness Program (Program). The purpose of the Guidelines is to govern the Floodplain Management, Protection, and Risk Awareness Program established in the Budget Act of 2019 (Assembly Bill [AB] 74, Item 3860-101-6088) and funded by the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Fund Act of 2018 (Proposition 68; Wat. Code, § 80000 et seq.).

The Council is an independent State of California 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 the State's coequal goals for the Sacramento-San Joaquin Delta (the Delta) of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, 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.)

Pursuant to the 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." (Wat. Code, § 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

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recommendations incorporated into 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. (Wat. Code, § 85057.5 and § 85225.)

Water Code section 85057.5(a) provides a multi-part definition of a covered action. A covered action is a project subject to the California Environmental Quality Act (CEQA) that would: 1) occur in whole or in part within the boundaries of the Legal Delta (Wat. Code, § 12220) or Suisun Marsh (Pub. Res. Code, § 29101) (Wat. Code, § 85057.5(a)(1)); 2) be carried out, approved, or funded by the State or a local public agency (Wat. Code, § 85057.5(a)(2)); 3) 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 (Wat. Code, § 85057.5(a)(4)); and 4) be covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015).

Proposition 68 represents an important potential resource for agencies and organizations to reduce flood risk associated with stormwater flooding, mudslides, and flash flooding. Projects that the Department of Water Resources (DWR) may fund through Proposition 68 could occur within the Delta and Suisun Marsh; such projects may potentially be covered actions. Consequently, DWR should include a requirement in the Guidelines for recipients of Proposition 68 funds whose projects would be located in whole or in part within the Delta or Suisun Marsh to engage in early consultation with the Council regarding potentially applicable Delta Plan regulatory policies.

Early consultation is a critical step in the process for determining consistency with the Delta Plan for covered actions; it also provides the state or local public agency an opportunity to discuss the project's possible impacts on, and benefits to, the coequal goals, the Council's regulatory processes, and the Delta Plan as it pertains to the project.

Council staff recommends that DWR add the following language to Section 3.4 of the Draft Guidelines ("Additional Eligibility Criteria"):

Consistency with the Delta Plan: For projects occurring, in whole or in part, within the Sacramento-San Joaquin Delta or Suisun Marsh, successful applicants shall engage in early consultation with the Delta Stewardship Council (Council) regarding the Council's regulatory policies that may be potentially applicable to the project and the consistency of the project with the Delta Plan. A state or local public agency proposing a project that is determined to be a "covered action" within the meaning of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Cal. Water Code section 85000, et seq., shall submit to the Council a "certification of consistency" that provides detailed findings regarding the project's consistency with the Delta Plan in accordance with the Delta Reform Act and the Delta Plan regulatory policies.

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Thank you for the opportunity to provide comments. Should you have any questions, please contact Erin Mullin at Erin.Mullin@deltacouncil.ca.gov.

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