



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

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RE: Comments on Draft IS/MND North Mokelumne River Multi-Benefit Project Sta. 1040+00 – 1200+00 [SCH #2021060346](#)

Dear Robert C. Wagner:

Thank you for the opportunity to review and comment on the North Mokelumne River Multi-Benefit Project (project). According to the Draft Initial Study/Mitigated Negative Declaration (IS/MND), the project will rehabilitate approximately 3 miles of the Staten Island levee system along the North Mokelumne River (NMR) to the Delta-exclusive PL 84-99 Standard.

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 in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.(Water 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.)

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.) To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that the covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings. (Wat. Code, §§ 85057, 585225; Cal. Code Regs., tit. 23 5001(j)(1).)

Covered Action Determination and Certification of Consistency with the Delta Plan

Based on the project location and scope described in the IS/MND, the project 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 the following conditions:

1. Will occur in whole or in part within the boundaries of the Delta (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101; Wat. Code § 85057.5(a)(1).) The approximate boundaries of these areas are publicly available on the Open Data Portal at <https://data.ca.gov/dataset/legal-delta-boundary>, and <https://data.ca.gov/dataset/suisun-marsh-boundary>. *This project would occur in part within the boundaries of the Delta.*
2. Will be carried out, approved, or funded by the State or a local public agency. (Wat. Code, § 85057.5(a)(2).) *This project would be carried out by Reclamation District No. 38 (RD 38), which is a local public agency, and would be funded, in part by the State.*
3. Is covered by one or more of the regulatory policies contained in the Delta Plan (Wat. Code, § 85057.5(a)(3).); Cal. Code Regs., tit. 23, §§ 5003-5015;. *Delta Plan regulatory policies that may apply to the project are discussed below.*
4. Will have a significant impact on the achievement of one or both coequal goals or the implementation of a government-sponsored flood

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control program to reduce risks to people, property, and State interests in the Delta. (Wat. Code, § 85057.5(a)(4).) *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.*

See also, Cal. Code Regs., tit. 23, § 5001(j)(1).

The State or local agency approving, funding, or carrying out the project must determine if the project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).) The Council notes that RD 38 included a Delta Plan Consistency Determination in its list of *Other Agencies Whose Approval is Required* within the Draft IS/MND (Draft IS/MND, p. i).

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following section describes the Delta Plan regulatory policies that may apply to the project based on the available information in the IS/MND. This information is offered to assist RD 38 to prepare environmental documents that could be used to support a Certification of Consistency for the project. This information may also assist RD 38 to describe the relationship between the proposed project and the Delta Plan in the project's Final IS/MND.

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 filed by a state or local agency approving, funding, or carrying out a covered action, and includes the following requirements which a project must comply with to be considered consistent with the Delta Plan:

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

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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>.

The Draft IS/MND for the proposed project identifies potentially significant impacts for biological resources, hydrology/water quality, and cultural resources. The Draft IS/MND proposes numerous avoidance and minimization measures to address these impacts. The proposed avoidance and mitigation measures in the Final IS/MND should be equally or more effective than applicable feasible Delta Plan mitigation measures in the Delta Plan MMRP. In particular, project Mitigation Measure BIO-6 should identify that the required detailed restoration plan be prepared as an adaptive management and monitoring program consistent with the framework established in Delta Plan Appendix 1B, and project Mitigation Measures BIO-4 and/or BIO-6 should require preparation of an invasive species management plan that meets the requirements set forth in Delta Plan Mitigation Measure 4-1. (See also, discussions under Policies GP 1(b)(4) and ER P5 and below.)

Best Available Science

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

Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs., tit. 23, Appendix 1A.) Prior to project implementation, RD 38 should prepare a Certification of Consistency that documents the scientific rationale for applying these six criteria to the project, drawing from technical studies prepared to support the project and/or the Final IS/ND. The Council’s Delta Science Program’s Adaptive Management Liaisons are available to provide further consultation and guidance

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regarding the use and documentation of best available science in RD 38's future Certification of Consistency for the project.

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, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. 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 access to adequate resources to implement the proposed adaptive management plan.

Because the proposed project includes creation of a riparian corridor, it is considered an ecosystem restoration project. An adaptive management plan consistent with the framework referenced above will be required as part of a Certification of Consistency with the Delta Plan for the project because of the multibenefit nature of this project. Project Mitigation Measure BIO-6 should be modified to specify that the detailed restoration plan that will be prepared and submitted to the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS) be written as an adaptive management and monitoring plan consistent with the framework established in Delta Plan Appendix 1B.

In its future Certification of Consistency, RD 38 should document how its adaptive management plan is consistent with the framework in Appendix 1B, and how its provisions for adaptive management are appropriate to the scope of the project. In addition, RD 38 should document the resources allocated to implement maintenance, monitoring, and any adaptive management actions described in the Certification. Information regarding the development of an adaptive management plan are available on the [Delta Stewardship Council's website](https://www.deltacouncil.ca.gov/delta-science-program/interagency-adaptive-management-coordination) at <https://www.deltacouncil.ca.gov/delta-science-program/interagency-adaptive-management-coordination>. Although not required, the document '[Elements of Adaptive Management and Monitoring Plans with Examples](https://www.deltacouncil.ca.gov/pdf/science-program/2021-01-28-elements-of-amps.pdf)' may be a helpful resource. (available at <https://www.deltacouncil.ca.gov/pdf/science-program/2021-01-28-elements-of-amps.pdf>) Also, the Delta Science Program's Adaptive

Management Liaisons are available to provide further consultation and guidance on documentation of adaptive management.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration be carried out consistent with [Appendix 3](#).¹ The elevation map included as [Figure 4-6](#)² and [Appendix 4](#)³ of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

The proposed project described in the Draft IS/MND would rehabilitate the levee and establish riparian habitat above Mean High Water along the NMR. RD 38 should identify the elevation of the project site in relation to current water levels and projected sea level rise (based on best available science) in the project Final IS/MND. A future Certification of Consistency for the project should describe how the proposed habitat restoration action is appropriate for these elevations, supported by the information added to the Final IS/MND.

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, including the use of setback levees, to increase floodplains and riparian habitats. The policy also requires the evaluation of setback levees in several areas of the Delta, which include: the North Forks of the Mokelumne River.

The proposed project described in the Draft IS/MND would rehabilitate the left river bank including setting back the levee along the NMR. A future Certification of Consistency for the project should document how RD 38 has evaluated, and where feasible, incorporated these alternatives.

¹[https://govt.westlaw.com/calregs/Document/I23859A8007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I23859A8007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

²<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>

³[https://govt.westlaw.com/calregs/Document/I7ABB10300C7A11E3AAD4AB9A1743D04A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I7ABB10300C7A11E3AAD4AB9A1743D04A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

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 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 Final MND should specifically discuss how the project will address both nonnative invasive 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.

As described above under Delta Plan Policy G P1(b)(2), project Mitigation Measures BIO-4 and/or BIO-6 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>. (Cal. Code Regs., tit. 23, § 5002(b)(2).) Delta Plan Mitigation Measure 4-1 requires that an invasive species management plan be developed and implemented for any project whose construction or operation could lead to introduction or facilitation of invasive species establishment. The plan shall ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels, be based on the best available science, and be developed in consultation with the California Department of Fish and Wildlife (CDFW) and local experts. The plan shall include the following:

- Nonnative species eradication methods (if eradication is feasible)
- Nonnative species management methods
- Early detection methods
- Notification requirements
- Best management practices for preconstruction, construction, and post construction periods
- Monitoring, remedial actions and reporting requirements
- Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems

(see Delta Plan MMRP, pp. 4-5)

In the Final IS/MND, Mitigation Measures BIO-4 and/or BIO-6 should include a requirement to prepare and implement a plan that includes the components described above in order to demonstrate consistency with Delta Plan policies G P1(b)(2) and ER P5 in a future Certification of Consistency.

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 uses or those uses described or depicted in city and county general plans when feasible, considering comments from local agencies and the Delta Protection Commission.

For levee sections that are experiencing erosion, the project would set the levee back and construct a landside berm to increase stability, which could conflict with existing or planned future land uses adjacent to the project site. The Land Use and Planning section of the Final IS/MND should acknowledge Policy DP P2 in the regulatory setting and describe analysis of current uses and planned uses, potential conflicts, how the project is sited to avoid or reduce conflicts, and the feasibility of avoiding or reducing such conflicts.

Risk Reduction Policy 1: 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 project described in the Draft IS/MND would help avoid adverse flood-related impacts and would contribute to reduced risk by decreasing potential flood impacts to people and property protected by the impacted levees. A future Certification of Consistency for the proposed project should describe how the project is consistent with the priorities and goals for State investment in Delta integrated flood management outlined in RR P1.

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Closing Comments

As the RD 38 proceeds with design, development, and environmental impact analysis of the project, the Council invites RD 38 to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan. As part of the Council, the Delta Science Program's Adaptive Management Liaisons are also available to provide further consultation and guidance regarding appropriate application of best available science and adaptive management.

More information on covered actions, early consultation, and the certification 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 RD 38 proceeds in the next stages of its project and approval processes. Please contact Erin Mullin at Erin.Mullin@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council