



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

November 1, 2021

California Department of Water Resources
Division of Operations and Maintenance
South Delta Branch
P.O. Box 942836
Sacramento, CA 94236

Via email: SDMS.Comment@water.ca.gov

RE: Comments on IS/MND for the Georgiana Slough Salmonid Migratory Barrier Project, SCH# 2021100009

To Whom It May Concern:

Thank you for the opportunity to review and comment on the Initial Study/ proposed Mitigated Negative Declaration (IS/MND) for the Georgiana Slough Salmonid Migratory Barrier Project (Project). The Delta Stewardship Council (Council) recognizes the objective(s) of the Project, as described in the IS/MND, to reduce the diversion of juvenile salmonids from the Sacramento River into the interior and south Sacramento-San Joaquin River Delta.

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. (Water 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

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Delta as an evolving place. 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.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. 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.)

Thank you for acknowledging the Council's regulatory authority, the Delta Plan, and the covered actions certification process (IS/MND, p. 3-86). This description occurs under the header "Land Use and Resource Management Plan for the Primary Zone of the Delta." In the final IS/MND, we recommend that DWR retitle this section or create two separate sections to reflect that the Delta Plan is distinct from the Land Use and Resource Management Plan, and that the Council's jurisdiction is not limited to the Primary Zone of the Delta.

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope, as described in the IS/MND, the Project may 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 or Suisun Marsh;*
- (2) *Will be carried out, approved, or funded by a State or a local public agency;*
- (3) *Is covered by one or more 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 State or local agency approving, funding, or carrying out the project must determine if that 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).) While the IS/MND describes the requirement for covered actions to demonstrate consistency with applicable Delta plan policies (IS/MND p. 3-86) it does not state whether DWR has determined that the Project is covered action. Please clarify in the Final IS/MND whether DWR considers the Project to be a covered action.

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 the Department of Water Resources (DWR) to determine whether the Project is a covered action, and to prepare environmental documents that could be used to support a Certification of Consistency for the Project.

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 by a state or local public agency for a covered action. The following is a subset of policy requirements which a covered action shall fulfill to be considered as 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 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 IS/MND identifies potentially significant impacts related to air quality, biological resources, cultural resources, greenhouse gas emissions, noise, and tribal cultural resources that require mitigation. DWR should review Appendix O to ensure that the proposed Project mitigation measures identified in the IS/MND are equally or more effective than the applicable Delta Plan mitigation measures listed in Appendix O.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that 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>).

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 for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

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 a covered action that has the reasonable probability to introduce or improve habitat conditions for nonnative invasive species to fully consider, and avoid or mitigate the potential for such conditions in a way that appropriately protects the ecosystem.

The IS/MND recognizes that “the presence of the barrier within the water column ... increases the potential for invasive aquatic weeds to accumulate on the barrier itself or its supporting structures. Clusters of invasive aquatic vegetation can provide beneficial cover for non-native fish predators, to the detriment of native fish species” (IS/MND p. 3-48). Therefore, the Project may have a reasonable probability of introducing or improving habitat conditions for nonnative invasive species as described in **ER P5** with respect to both invasive aquatic weeds and non-native fish predators. As a result, if the Project is determined to be a covered action, DWR should show how the Project’s potential to introduce or improve habitat conditions for nonnative invasive species has been “fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.”

The Project includes the following protective environmental measure to minimize and avoid impacts on waters of the United States and other sensitive environmental resources:

“2.7.12 Remove Invasive Plant Species”

DWR would coordinate with the California Department of Parks and Recreation Division of Boating and Waterways Aquatic Weed Control Program for the control of invasive aquatic weeds in the vicinity of the [Bio-Acoustic Fish Fence (BAFF)] that are covered by the control program while the BAFF is in place. As needed, the Division of Boating and Waterways would conduct herbicide treatments to control infestations of covered aquatic weeds that may result from these weeds being caught on the BAFF or its supporting infrastructure. DWR would coordinate with the Division of Boating and Waterways on removal strategies for covered invasive aquatic weeds as necessary to ensure that the BAFF does not exacerbate current aquatic invasive weed problems.” (IS/MND p.2-18)

The IS/MND states that “any aquatic weed removal activities conducted by Division of Boating and Waterways would be conducted in a manner that would avoid accumulation and ensure that there is not new introduction and/or promote the proliferation of aquatic weeds in the project area. This coordination and response by Division of Boating and Waterways would occur both during project operations and non-operational periods.” (IS/MND, p.3-48)

The IS/MND states that the “net improvement to juvenile outmigration success from reduced predation loss is expected to improve as a result of the Georgiana Slough Salmonid Migratory Barrier,” even though “nonnative fish predators may congregate around the in-water structures” (IS/MND pp. 3-47 - 3-48). As a result of this net improvement, the IS/MND states that “the project would not result in created improved habitat conditions for nonnative species.” (IS/MND, p. 3-48) DWR should acknowledge Policy ER P5 in the Final IS/MND and provide further explanation as to whether this policy applies to the Project, and why. The Final IS/MND should provide further detail describing how the Project would avoid or mitigate conditions that would lead to new introductions of invasive species or improve habitats for invasive species with regard to invasive aquatic vegetation and non-native fish predators, such that no mitigation is required for this policy beyond the avoidance measures proposed as part of the project.

In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 which requires an invasive management plan to ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or substitute an equally or more effective measure.

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 or planned future land uses when feasible, considering comments from local agencies and the Delta Protection Commission.

The Final IS/MND should clarify whether the Project is a water management or ecosystem restoration action. If the Project is a water management or ecosystem restoration action, the Final IS/MND should describe the process undertaken to avoid or reduce conflicts with existing or planned land uses.

The IS/MND states that “Construction of the proposed project could interfere with navigation because the project site in the Sacramento River is normally open to navigation,” (IS/MND p. 3-87) and that the Project could reduce the existing

navigational clearance in the Sacramento River and Georgiana Slough (IS/MND p. 3-101). While the IS/MND describes a variety of factors that make this impact a less-than-significant from a CEQA perspective, the project may conflict with existing navigational use of the Sacramento River and Georgiana Slough. The IS/MND should provide a full description regarding how DWR considered the feasibility of options that would avoid or reduce potential conflicts with existing navigational uses.

The Final IS/MND should clarify whether the Project is a water management or ecosystem restoration action. If the Project is a water management or ecosystem restoration action, DWR should prepare an adaptive management plan that meets the requirements set forth in G P1(b)(4) and Appendix 1B prior to submitting a Certification of Consistency with the Delta Plan to the Council.

CLOSING COMMENTS

Council staff invite DWR to engage in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and applicable Delta Plan policies, as well as mitigation measures that would promote consistency with the Delta Plan. As part of the Council, the Delta Science Program's Adaptive Management Liaisons are 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's website:

<https://coveredactions.deltacouncil.ca.gov>.

Please contact Chris Kwan, Sr. Environmental Scientist, at 916-902-6476 or chris.kwan@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council