



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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Date March 28, 2022

Anitra Pawley
California Department of Water Resources (DWR)
P.O. Box 942836
Sacramento, CA 94236-0001

Delivered via [email]: anitra.pawley@water.ca.gov

**RE: McCormack-Williamson Tract Levee Modification and Habitat
Restoration Phase B Supplemental EIR (SCH #2003012112)**

Dear Anitra Pawley:

Thank you for the opportunity to review and comment on the McCormack-Williamson Tract Levee Modification and Habitat Restoration Project – Phase B (MWT Phase B). The Delta Stewardship Council (Council) understands the objectives of MWT Phase B are to implement flood control improvements in a manner that benefits aquatic and terrestrial habitats, species, and ecological processes, and incorporates landscape scale restoration of Delta habitat. The Department of Water Resources (DWR) submitted a Certification of Consistency for the McCormack-Williamson Tract Project and the Grizzly Slough Project in 2018 (Certification of Consistency 20186), prior to the project changes outlined in the Draft Supplemental EIR (Draft SEIR). Phase A of the project, as described in Certification of Consistency 20186 was constructed in 2018 and 2019. Due to a natural levee breach and flooding in 2017 at MWT and following completion of new flood modelling, DWR has prepared a Draft SEIR for Phase B of the project, to cover the new physical

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 2

conditions at the site and project changes. This letter presents the Council's comments regarding the MWT Phase B Draft SEIR.

The Council is an independent California 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 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, as defined by the Delta Reform Act, 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.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope described in the Draft SEIR, the proposed 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 of the following conditions:

(1) Will occur in whole or in part within the boundaries of the legal Delta (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). The approximate boundaries of these areas are publicly available on the Open Data Portal at

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 3

<https://data.ca.gov/dataset/legal-delta-boundary> and <https://data.ca.gov/dataset/suisun-marsh-boundary>. The project is located within the legal Delta.;

(2) Will be carried out, approved, or funded by the State or a local public agency. The project will be carried out by DWR, a State agency.;

(3) Will 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. The project will have a significant impact on the coequal goal of protecting, restoring, and enhancing the Delta Ecosystem, and a significant impact on the implementation of a government-sponsored flood control program.;

(4) Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015). Delta Plan regulatory policies that may apply to the proposed project are discussed below.

It is the State or local agency approving, funding, or carrying out the project that must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation, and make sure to reference the previous certification. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the Draft SEIR. This information is offered to assist DWR 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 project proponent of a project that

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 4

is a covered action. The following is a subset of GP 1 requirements that a project must 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 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 Draft SEIR identifies significant impacts that require mitigation in the resource areas of hydrology and water quality, air quality, noise, biological resources, land use, agriculture, recreation and economics, public health and hazards, and cultural and tribal resources. As such, DWR should review Delta Plan Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

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 1 B 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. New project components assessed in the Draft SEIR should be included in the project's adaptive management plan, including but not limited to the seepage-monitoring program and the invasive species management plan. The adaptive management framework submitted as part of the Certification 20186 should be updated to incorporate MWT Phase B components.

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 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>). The elevation map included as Figure 4-6 (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. The final SEIR should identify if the project's adjusted landside levee slope and resulting subtidal open water/shallow subtidal, tidal marsh, and riparian scrub/mixed riparian woodland/valley oak habitats are consistent with Appendix 3, Figure 4-6, and Appendix 4 of the Delta Plan, with consideration for current water levels and projected sea level rise (based on best available science).

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated. The MWT Phase B project is located within the Cosumnes-Mokelumne River Confluence PHRA. The Draft SEIR notes that the new extensive interior grading proposed for Phase B would avoid conditions under which MWT would be permanently inundated subtidal open-water habitat following site

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 6

breaching, and that the newly proposed grading aims to increase acreage of riparian habitats to offset the expected inundation and conversion of woody riparian habitats that would be tidal and subtidal elevations following interior grading. DWR should acknowledge Policy ER P3 in the Biological Resources section of the final SEIR and discuss floodplain and marsh habitat restoration components of the project provided in the Draft SEIR to support a future Certification of Consistency.

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 to increase floodplains and riparian habitats. The policy also requires the evaluation of setback levees in several areas of the Delta, which include the Mokelumne River adjacent to the project site. A future Certification of Consistency for the project should document how alternatives that would increase floodplains and riparian habitats were evaluated and how a setback levee was or was not incorporated within the project.

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. DWR should acknowledge Policy ER P5 in the Biological Resources section of the final SEIR. The draft SEIR highlighted several existing problematic aquatic and terrestrial plant species that will be the target of invasive species management efforts. The final SEIR should analyze how the MWT Phase B project would fully consider and avoid or mitigate the potential for new introductions of or improved habitat conditions for both nonnative wildlife species and terrestrial and aquatic weeds. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or substitute equally or more effective measures.

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 7

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 requiring that water management facilities, ecosystem restoration, and flood management infrastructure be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission. The MWT Phase B project would convert agricultural areas into natural habitat types including seasonal floodplain, riparian habitat, and tidal wetlands. The draft SEIR notes that conflicts with state and regional policies regarding the protection of agricultural land were avoided through advanced mitigation at Staten Island, and that after the 2017 flood event agricultural production on MWT ceased due to concerns of recurring flooding, including planting of crops and other activities to maintain the site for agricultural areas (MWT Project-Phase B Draft Supplemental EIR 3-176). Further, the draft SEIR states that all the habitat on the project site is now considered annual grassland/ruderal, and that DWR has also filed a notification with Sacramento County to remove MWT lands from their Williamson Act contracts. Lastly, the draft SEIR notes that the design and location of proposed replacement poles for Sacramento Metropolitan Utility District distribution lines has not yet been finalized, but would be unlikely to result in a loss of Farmland. DWR should provide documentation supporting these conclusions as part of both the final SEIR and a future Certification of Consistency for the project and document whether the project conflicts with these or other existing uses.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) prohibits the presence or construction of encroachments in floodways that are not designated floodways or regulated streams, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety. The project design would provide additional floodplain habitat and flood storage and reduce the severity of impacts from catastrophic floods. DWR should acknowledge Policy RR P3 in the regulatory setting, and any potential for encroachment on undesignated floodways or unregulated streams, in

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration Project

March 28, 2022

Page 8

the Hazards or the Hydrology section of the final SEIR. Additionally, the SEIR notes that the project may result in a small increase in peak water levels during smaller, more frequent 10-year floods, but that there would not be overtopping or scour (MWT Project-Phase B Draft Supplemental EIR 3-47). DWR should more fully document this conclusion in the final SEIR and a future Certification of Consistency for the project. In the final SEIR, DWR should also analyze how the project would not impede the free flow of water in the floodway or otherwise jeopardize public safety.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that, unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions, no encroachment shall be allowed or constructed in the floodplain in certain areas within the legal Delta, including the Yolo Bypass / Cosumnes-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson). While no proposed infrastructure would encroach on the floodplain, DWR should acknowledge Policy RR P4 in the regulatory setting for the Hazards and/or the Hydrology section(s) of the final SEIR. In a future Certification of Consistency for the project, DWR should disclose the beneficial impact of the proposed project on floodplain values and functions, and document how the proposed project is consistent with Policy RR P4.

CEQA REGULATORY SETTING

For each resource section in which a Delta Plan policy is applicable, the final SEIR's description of the regulatory setting should include the Delta Plan and a reference to the specific applicable regulatory policy or policies.

CLOSING COMMENTS

As DWR proceeds with the final SEIR, the Council invites DWR 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.

More information on covered actions, early consultation, and the certification process can be found on the Council website,

Anitra Pawley

Draft SEIR McCormack-Williamson Tract Levee Modification and Habitat Restoration
Project

March 28, 2022

Page 9

<https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as DWR proceeds in the next stages of its project and approval processes. Please contact Morgan Chow at (916) 445-5511 or Morgan.Chow@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