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November 6, 2024

Tyson Zimmerman, Assistant General Manager  
Ironhouse Sanitary District  
450 Walnut Meadows Drive  
Oakley, CA 94561

Delivered via email: [zimmerman@isd.us.com](mailto:zimmerman@isd.us.com)

**RE: Comments on Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration for the Giant Garter Snake Mitigation Bank Project, SCH# 2024-100624**

Dear Tyson Zimmerman:

Thank you for the opportunity to review and comment on the Ironhouse Sanitary District's (ISD) Giant Garter Snake Mitigation Bank Project (mitigation bank project) Notice of Intent (NOI) for an Initial Study/Mitigated Negative Declaration (IS/MND). The Delta Stewardship Council (Council) recognizes the objective of the mitigation bank project to establish a 189-acre habitat for the giant garter snake to be operated as a mitigation bank.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; 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 Delta (Delta) ecosystem. (Wat. 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. (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, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300.) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 5001 et seq. 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, 85225.10.) 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.)

## **COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN**

Based on the mitigation bank project location and scope, as provided in the NOI, the proposed mitigation bank project appears to meet the definition of a covered action. Water Code section 85057.5, subdivision (a), states that a covered action is a plan, program, or project, as defined pursuant to the California Environmental Quality Act (CEQA) in Public Resources Code section 21065, that meets all of the following conditions:

*(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* This mitigation bank project would occur on Jersey Island, located in the legal Delta.

*(2) Will be carried out, approved, or funded by a state or a local public agency.* This mitigation bank project would be carried out by the ISD, a local public agency.

*(3) Is covered by one of the provisions of the Delta Plan. Potentially applicable Delta Plan regulatory policies are described below.*

*(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. This mitigation bank project would have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta Ecosystem.*

The state or local agency approving, funding, or carrying out a covered action is required to file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001, subd. (k)(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 mitigation bank project based on the available information in the IS/MND. This information is offered to assist the ISD to prepare a future Certification of Consistency.

### *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 is required to be addressed in a Certification of Consistency by a certifying agency for a project that is a covered action. The following is a subset of policy requirements that a project is required to fulfill to be considered consistent with the Delta Plan:

#### *Mitigation Measures*

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) requires covered actions not exempt from CEQA to 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 a state or local agency other than the state or local agency that files the Certification of Consistency, or substitute mitigation measures that

the state or local agency finds are equally or more effective. These mitigation measures are identified in Appendix O of the Delta Plan 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 that can be mitigated to a less-than-significant level with the implementation of specified mitigation measures. Before submitting a Certification of Consistency to the Council, the ISD should review Appendix O and ensure that proposed mitigation bank project Mitigation Measures (AMMs) are equally or more effective than the Delta Plan mitigation measures.

### *Best Available Science*

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).) states that actions subject to Delta Plan regulations are required to document the 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, subd. (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A (Cal. Code Regs., tit. 23, app. 1A.), which also is in the Delta Plan. (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>)

The project documentation cites peer-reviewed literature and other relevant Sources, but, if applicable, could benefit from additional references concerning climate change impacts. In a future Certification of Consistency, the ISD should directly identify how the mitigation bank project addresses each Best Available Science criterion outlined in Appendix 1A.

### *Adaptive Management*

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4).) requires that ecosystem restoration and water management covered actions include adequate provisions for the continued implementation of adaptive management, appropriate to the scope of the project. This requirement is satisfied through both a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B (Cal. Code Regs, tit. 23, app. 1B) and also found in 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. The ecosystem restoration components of the mitigation bank project would require the preparation of an adaptive management plan. Please visit the [Interagency Adaptive Management Coordination webpage](#) for resources to help create a more effective adaptive management plan, including a checklist of what to include, examples from other plans, monitoring resources, and more.

### *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. (Cal. Code Regs, tit. 23, app. 3.) The elevation map (Cal. Code Regs, tit. 23, app. 4.), which also is included as Figure 4-6 in the Delta Plan, (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

As part of a future Certification of Consistency for the mitigation bank project, the ISD should consider addressing any deviations from this policy and document how the proposed habitat restoration action is appropriate for these elevations based on best available science.

### *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 in a way that appropriately protects the ecosystem.

The Operational Activities and Section XI. Land Use and Planning (Natural Resources P-4) in the IS/MND addresses invasive plant management and describes how the mitigation bank project would manage existing invasive plants on site. However, ER P5 requires the certifying agency to describe how it would avoid or mitigate conditions that would lead to new establishments of nonnative invasive species. Mitigation measures, if warranted, 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.

## **CLOSING COMMENTS**

There are discrepancies between the IS/MND, the letter from the Native American Heritage Commission (NAHC), and the ECORP report to the ISD as to whether the NAHC's search of the Sacred Lands file revealed the presence of Native American cultural resources in the mitigation bank project area. There is also a discrepancy describing when the NAHC was first contacted. For the final IS/MND, the Council recommends the ISD review and correct the complete record related to tribal outreach.

The Council invites the ISD to engage Council staff in early consultation prior to the submittal of a Certification of Consistency to discuss the mitigation bank 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, <https://coveredactions.deltacouncil.ca.gov>.

Council staff are available to discuss issues outlined in this letter as the ISD proceeds in the next stages of its mitigation bank project and approval processes. Please contact Eva Bush at [eva.bush@deltacouncil.ca.gov](mailto:eva.bush@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson  
Deputy Executive Officer