



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

July 10, 2026

Jerred Dixon
Reclamation District 38
c/o Wagner & Bonsignore, Consulting Civil Engineers
2379 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Delivered via email: jerred.dixon@cfrstaten.com
mberber@wbecorp.com

RE: Comments on the Draft Initial Study/Mitigated Negative Declaration for the Mokelumne River Confluence Multi-Benefit Project, SCH# 2026060465

Dear Jerred Dixon:

Thank you for the opportunity to review and comment on the Mokelumne River Confluence Multi-Benefit Project (multi-benefit project) Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND). The Delta Stewardship Council (Council) recognizes the objectives of Reclamation District 38 (RD 38) to rehabilitate the levee section to the Delta-Specific Public Law 84-99 standard, while also constructing an additional section of setback levee and waterside habitat bench planted with native riparian species, creating approximately 1 acre of delta levee waterside habitat at the confluence of the North and South Mokelumne rivers on Staten Island.¹ 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)

¹ Staten Island is identified as a Very-High Priority island within the Delta Levees Investment Strategy (DLIS). (Cal. Code Regs., tit. 23, § 5012.)

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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 and Suisun Marsh (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. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, sections 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 initiation of the implementation of the action. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the multi-benefit project location and description in the Draft IS/MND, the multi-benefit project may 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 (Pub. Resources Code, § 21000 et seq.; 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*
- (2) Will be carried out, approved, or funded by a state or a local public agency*
- (3) Is covered by one of the provisions of the Delta Plan*
- (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 Delta²*

As the public agency approving, funding, or carrying out the multi-benefit project, RD 38 must determine if the multi-benefit project is a covered action (Cal. Code Regs., tit. 23, § 5001, subd. (o)(3).) and, if so, file a certification of consistency with the Council prior to implementation. (Wat. Code, § 85225.)

Delta Plan Policies that May Cover the Multi-benefit Project³

The following section describes regulatory Delta Plan policies that may cover the multi-benefit project based on materials provided in the Draft IS/MND. (Wat. Code § 85057.5, subd. (a)(1).) This information could be used to support a future filing of a certification of consistency with the Council.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy ER P2 (Cal. Code Regs., tit. 23, § 5006.) requires the disclosure of specified information to demonstrate how planned restoration projects account for anticipated changes in tidal activity in the Delta due to sea level rise and how these changes affect restored habitats' ability to provide maximum benefits in the future. The multi-benefit project proposes to add one acre of delta levee waterside habitat at the confluence of the North and South Mokelumne rivers. If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should describe how proposed habitat elevations were selected in relation to current water levels, projected sea level rise, and anticipated future vegetation communities.

² For purposes of Water Code section 85057.5, subdivision (a)(4), "significant impact" means "a substantial positive or negative 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, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects." (Cal. Code Regs., tit. 23, § 5001, subd. (ss).)

³ DLIS was also mentioned in the Draft IS/MND (p. 64). RR P1 (Cal. Code Regs., tit. 23, § 5012.) does not establish requirements RD 38 must meet in a future consistency determination for the multi-benefit project. Rather, RR P1 establishes priorities for Delta levee operations, maintenance, and improvements; outlines the DLIS levee improvement priorities for each Delta island and tract; and sets requirements for the Department of Water Resources to annually report on State funds distributed or provided for levee improvement, operations, and maintenance.

Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008.) requires specified levee projects to evaluate and, where feasible, incorporate alternatives that increase floodplains and riparian habitats. If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should describe the process that led RD 38 to propose a setback levee, and document anticipated benefits to floodplain and riparian habitat functions.

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.

If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should describe efforts undertaken to fully consider and avoid introducing, or improving habitat conditions for, nonnative invasive species during and after construction. This should include, but not be limited to, emerging species of concern, such as nutria and golden mussel. If mitigation is warranted, mitigation and minimization measures should include Delta Plan Mitigation Measure 4-1(e) (available in Delta Plan Appendix O <https://deltacouncil.ca.gov/pdf/delta-plan/2025-06-19-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or equally or more effective measures.

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) was designed to achieve one of the Delta Plan's charges to protect the Delta as an evolving place by requiring the siting of 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 for their jurisdictions or spheres of influence, when feasible, considering comments from local agencies and the Delta Protection Commission.

This policy was mentioned by RD 38 in the IS/MND (pg. 64) as the multi-benefit project includes rehabilitation and construction of a flood management structure. If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should acknowledge the existing land use and how that was considered in the siting.

The following policies also apply in the event one or more of the preceding policies covers the multi-benefit 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 is required to be addressed in a certification of consistency for a covered action. The following is a subset of policy requirements that a covered action 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 June 23, 2022, 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 regulations as Appendix O (<https://deltacouncil.ca.gov/pdf/delta-plan/2025-06-19-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

The Draft IS/MND identifies potentially significant environmental impacts that can be mitigated to a less-than-significant level with implementation of proposed mitigation measures for Biological Resources, Cultural Resources and Tribal Cultural Resources (IS/MND pgs. 40-46, 49, 75-76). Based on this policy's requirements, if RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should identify which Appendix O mitigation measures apply and document how the proposed mitigation meets or exceeds the effectiveness of the Appendix O mitigation measures

or explain why implementation is not feasible, and include that analysis in the record supporting the certification of consistency.⁴

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. (g).) Best available science is also required to be consistent with the guidelines and criteria in Delta Plan Appendix 1A (<https://deltacouncil.ca.gov/pdf/delta-plan/2025-11-12-appendix-1a.pdf>). (Cal. Code Regs., tit. 23, div., 6, ch. 2, app. 1A.)

If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should identify how the multi-benefit project addresses each Appendix 1A criterion.

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, appropriate to the scope of the covered action, to ensure continued implementation of adaptive management. This requirement is satisfied through both of the following:

- a) the development of an adaptive management plan that is consistent with the framework described in Delta Plan Appendix 1B (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>)
- b) documentation of access to adequate resources and delineated authority to implement the proposed adaptive management plan

If RD 38 determines that the multi-benefit project is a covered action, a certification of consistency should include an adaptive management plan appropriate to the scope of the multi-benefit project for the monitoring and maintenance of the habitat plantings described in the Draft IS/MND (pg. 7).

⁴ Please note specific mitigation requirements related to nonnative invasive species described under Ecosystem Restoration Policy 5 (ER P5) above.

July 10, 2026

CLOSING COMMENTS

The Council invites RD 38 to engage Council staff in early consultation prior to the submittal of a certification of consistency to 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://deltacouncil.ca.gov/covered-actions/>

Council staff are available to discuss issues outlined in this letter as RD 38 proceeds in the next stages of the multi-benefit project and approval processes. Please contact Eva Bush at eva.bush@deltacouncil.ca.gov with any questions.

Sincerely,

Jeff Henderson
Deputy Executive Officer