



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

January 29, 2024

Mr. Jesse Barton

Reclamation District 1601

c/o Gallery & Barton, APLC

1112 I Street, Suite 240

Sacramento, CA 95814

Delivered via email: jbarton@gallerybartonlaw.com

RE: Comments on Twitchell Island Wetland Enhancement and Restoration Project Mitigated Negative Declaration, SCH# 2023110643

Dear Mr. Jesse Barton:

Thank you for the opportunity to review and comment on the Notice of Intent to adopt a Mitigated Negative Declaration (MND) for the Twitchell Island Wetland Enhancement and Restoration Project (project). The Delta Stewardship Council (Council) recognizes the objective of the Twitchell Island Wetland Enhancement and Restoration Project (project), as described in the NOI, to enhance and restore 40 acres of wetland and 80 acres of riparian and scrub-shrub habitat as mitigation for participants of the Delta Levees Program.

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

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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. (Ibid.) 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(a).)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. 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, 85225.30.) 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 project location and scope, as provided in the NOI, 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 Delta or Suisun Marsh. This project would occur within the boundaries of the Legal Delta.

(2) Will be carried out, approved, or funded by a State or a local public agency. This project would be carried out by Reclamation District 1601 (RD 1601), a local agency.

(3) Is covered by one of the provisions of the Delta Plan. Delta Plan Regulatory Policies that may apply to the project are discussed 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 project would have a significant impact on 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 must file a Certification of Consistency with the Council prior to project implementation. (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 would apply to the proposed project based on the available information in the Draft IS/MND. This information is offered to assist RD 1601 prepare a future 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 certifying agency for a project that is a covered action. The following is a subset of policy requirements which a project 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 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 project IS/MND identifies potentially significant impacts that can be mitigated to less-than-significant impacts. RD 1601 should include any applicable mitigation measures in Appendix O of 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>).

The project documentation cites peer reviewed literature and other relevant sources. In a future Certification of Consistency, RD 1601 should directly identify how the covered action addresses each Best Available Science criterion outlined in Appendix 1A. The Certification would also benefit from additional references concerning climate change.

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.

This potential covered action is an ecosystem restoration project that would require an adaptive management plan. The Draft IS/MND does not reference the use of adaptive management or make reference to an adaptive management plan. As part of a future Certification of Consistency for the project, RD 1601 would need to complete an adaptive management plan that is consistent with the framework described in Appendix 1B.

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.

As part of a future Certification of Consistency for the project, RD 1601 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, striped bass, or bass in a way that appropriately protects the ecosystem.

Section 2.4.8 of the Draft IS/MND addresses invasive plant management and describes how the 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.

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.

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RD 1601 should acknowledge **DP P2** in the environmental setting for the Land Use and Planning section of the Final IS/MND (p. 62 of the draft IS/MND). The IS/MND should describe the process proposed to avoid or reduce conflicts with existing or planned future land uses.

The Delta Protection Commission commented on the Draft IS/MND on December 28, 2023, noting concerns about proposed conversion of existing farmland and pastureland on Twitchell Island to a non-agricultural use, requesting use of the [Good Neighbor Checklist](#) to minimize impacts to adjacent uses, and requesting mitigation measures that address the loss of agricultural land. The Delta Plan requires that a certifying agency demonstrate in a Certification of Consistency for **DP P2** how it has considered comments from the Delta Protection Commission regarding the siting of ecosystem restoration projects. A future Certification of Consistency for the project should identify how RD 1601 considered the Delta Protection Commission's comments.

CLOSING COMMENTS

The Council invites RD 1601 to continue to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss the preparation of a certification that establishes consistency with the Delta Plan. (Wat. Code § 85225.5. 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 1601 proceeds in the next stages of its project and approval processes. Please contact Eva Bush at 916-284-1619 or Eva.Bush@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP, Deputy Executive Officer