



# DELTA PLAN ECOSYSTEM AMENDMENT

Final Program Environmental Impact Report

June 2022 | State Clearinghouse # 202050219



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY



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## Acronyms

<b><u>Acronym</u></b>	<b><u>Definition</u></b>
AB	Assembly Bill
AWMP	Agricultural Water Management Plan
Bay-Delta Plan	Bay-Delta Water Quality Control Plan
BDCP	Bay Delta Conservation Plan
BMP	best management practice
Cal. Code of Regs.	California Code of Regulations
California WaterFix	Water conveyance portion of the Bay Delta Conservation Plan
CEQA	California Environmental Quality Act
cfs	cubic feet per second
cm/yr	centimeters per year
COA	Coordinated Operations Agreement
Council	Delta Stewardship Council
CRHR	California Register of Historical Resources
CSCC	California State Coastal Conservancy
CVFPB	Central Valley Flood Protection Board
CVFPP	Central Valley Flood Protection Plan
CVP	Central Valley Project
Central Valley Regional Water Board	Central Valley Regional Water Quality Control Board
CSCC	California State Coastal Conservancy
CV-SALTS	Central Valley Salinity Alternatives for Long-Term Sustainability
Delta	Sacramento–San Joaquin Delta
Delta ISB	Delta Independent Science Board
Delta Reform Act	Sacramento–San Joaquin Delta Reform Act of 2009
DLIS	Delta Levee Investment and Risk Reduction Strategy
DOC	dissolved organic carbon
DPC	Delta Protection Commission
DPIIC	Delta Plan Interagency Implementation Committee
DREAM	Demonstration Recharge Extraction and Aquifer Management
DWR	California Department of Water Resources
EBMUD	East Bay Municipal Utilities District
EcoRestore	Ecosystem Restoration Program
Estuary	San Francisco estuary

## Acronyms

<b><u>Acronym</u></b>	<b><u>Definition</u></b>
GHG	greenhouse gas
HCP	Habitat Conservation Plan
Health & Saf. Code	Health and Safety Code
I	individuals
IID	Imperial Irrigation District
LO	local agencies
LSZ	low-salinity zone
Metropolitan	Metropolitan Water District of Southern California
MND	Mitigated Negative Declaration
NAHC	Native American Heritage Commission
ND	Negative Declaration
NHA	National Heritage Area
NOA	Notice of Availability
NOD	Notice of Determination
NOP	Notice of Preparation
NSJCWCD	North San Joaquin Water Conservation District
OR	organizations
PEIR	Program Environmental Impact Report
PFAS	perfluoroalkyl substances or fluorine-rich substances
PM	Performance Measure
POD	Point of Diversion
PPIC	Public Policy Institute of California
Proposed Project	proposed Ecosystem Amendment
psu	practical salinity units
Pub. Resources Code	Public Resources Code
RD	Reclamation District
Reclamation	U.S. Bureau of Reclamation
Regional San	Sacramento Regional County Sanitation District
SASD	Sacramento Area Sewer District
SB	Senate Bill
SCVWD	Santa Clara Valley Water District
SDCWA	San Diego County Water Authority
SLC	State Lands Commission
ST	State of California agencies
SWP	State Water Project
SWRCB	State Water Resources Control Board

## Acronyms

<b><u>Acronym</u></b>	<b><u>Definition</u></b>
TCP	traditional cultural properties
T	Tribes
TR	topical responses
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
U.S. mail	U.S. Postal Service
UWMP	urban water management plans
VMT	vehicle miles traveled
Wat. Code	Water Code





# Chapter 1

## Introduction

### 1.1 Purpose and Intended Use of this Document

The Delta Stewardship Council (Council) is proposing to adopt amendments to Chapter 4 of the Delta Plan, Protect, Restore, and Enhance the Delta Ecosystem (proposed Ecosystem Amendment or Proposed Project). The Delta Plan, a long-term management plan for the Sacramento-San Joaquin Delta (Delta) prepared pursuant to the Sacramento–San Joaquin Delta Reform Act of 2009 (Delta Reform Act),<sup>1</sup> was adopted in 2013 and was last amended in 2018.<sup>2</sup> The proposed Ecosystem Amendment is described in detail in Draft Program Environmental Impact Report (PEIR) Chapter 3, *Project Description*. Subsection 3.4 of the Draft PEIR presents the proposed new, revised, and removed policies, recommendations, and performance measures within Chapter 4 and Appendix E of the Delta Plan (see Appendix C of the Draft PEIR).

In summary, the proposed Ecosystem Amendment consists of:

- ♦ An updated Delta Plan Chapter 4 narrative, including new and revised policies and recommendations that replace some recommendations that have been removed (see Attachment C-1. Proposed Delta Plan Chapter 4, Protect, Restore and Enhance the Delta Ecosystem);
- ♦ Three regulatory appendices (Appendices 3A and 4A, which include new definitions; and Appendix 8A) (see Attachment C-2. Regulatory Appendices);
- ♦ Four technical appendices (Appendices Q1 through Q4) (see Attachment C-3. Technical Appendices); and
- ♦ An appendix updated with new and revised ecosystem performance measures pertinent to the coequal goal of protecting, restoring, and enhancing the Delta

<sup>1</sup> The Delta Reform Act is Division 35 of the Water Code.

<sup>2</sup> In March 2020, the Council adopted a resolution that, among other actions, rescinded revisions to Delta Plan Policy RR P1. Proposed revisions to Delta Plan Policy RR P1 are currently undergoing the rulemaking process. At its August 2021 meeting, the Delta Stewardship Council reviewed and approved for purposes of rulemaking an update to DLIS based on new elevation information, approved an addendum to the Program Environmental Impact Report for the Delta Plan Amendments, and authorized staff to initiate rulemaking under the Administrative Procedures Act.

ecosystem and indicating performance measures that have been removed (Appendix E) (see Attachment C-4. Performance Measures).

The proposed Ecosystem Amendment is based on best available science and implements adaptive management principles included in the Delta Plan. The fundamental purpose of the Delta Plan is to further the achievement of the coequal goals, as defined in Water Code (Wat. Code) section 85054. The objectives common to the Delta Plan and its amendments are derived from the Delta Reform Act (see Chapter 2, *Delta Plan Background*, of the Draft PEIR) to further the achievement of the coequal goals defined in Wat. Code section 85054 and the eight “inherent” objectives set forth in Wat. Code section 85020 in a manner that:

1. Furthers the statewide policy to reduce reliance on the Delta in meeting the state’s future water supply needs through regional self-reliance (Wat. Code section 85021);
2. Is consistent with specific statutory content requirements for the Delta Plan (Wat. Code sections 85302(c) through 85302(e) and 85303–85308);
3. Is implementable in a comprehensive, concurrent and interrelated fashion; and
4. Is accomplished as rapidly as realistically possible without jeopardizing ultimate success.

The Delta Reform Act calls for the Delta Plan to include strategies to assist in guiding State of California (State) and local agency actions related to the Delta (Wat. Code section 85300(a)). Chapter 4 of the Delta Plan presents the five proposed core strategies set forth below to further achieve one of the Delta Reform Act’s coequal goals of protecting, restoring, and enhancing the Delta ecosystem. The following project objectives are specific to the proposed Ecosystem Amendment and are derived from the core strategies, which are in turn derived from the Delta Reform Act (Wat. Code section 85302) and form the basis for the proposed amendment (see subsection 3.1 in Chapter 3 of the Draft PEIR):

1. Create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.
2. Implement large-scale restoration projects that restore ecosystem function, increase resilience to climate change, are compatible with adjacent land uses, and that support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place.
3. Protect opportunities to restore ecosystems and safeguard against land loss by taking sea level rise and long-term flood risk into consideration; protecting land from development; reducing, halting, or reversing subsidence; and incentivizing agricultural land management practices that support native wildlife and counter subsidence.

4. Prevent introduction of non-native invasive species; manage non-native invasive species impacts; and improve fish management to support the reproductive success and survival of native fish.

5. Facilitate implementation of ecosystem protection, enhancement, restoration, and mitigation projects in the Delta by improving the efficiency and effectiveness of actions by public agencies and private organizations engaged in proposing, approving, and permitting such projects.

The Delta Plan includes an integrated and legally enforceable set of policies that serve as the basis for findings of consistency by State and local agencies with regard to specified “covered actions,” as defined in Wat. Code section 85057.5. Water Code sections 85225 et. seq. require any state or local public agency that proposes to undertake a covered action to submit to the Council a certification of consistency with the Delta Plan for the covered action. This process is discussed in more detail in Chapter 2 of the Draft PEIR.

This Final PEIR has been prepared on behalf of the Council to respond to comments on the Draft PEIR dated September 27, 2021, and to describe text changes made in response to comments and initiated by staff (see Chapter 2 of this Final PEIR). As required by California Environmental Quality Act (CEQA) Guidelines section 15088(c), this Final PEIR contains written responses to comments that raise significant environmental issues received by the Council from agencies and the public on the Draft PEIR (see Chapter 3 of this Final PEIR). The responses to comments clarify, amplify, and make non-substantive modifications to the Proposed Project and the Draft PEIR and do not change the findings or conclusions of the Draft PEIR.

The PEIR for the Delta Plan Ecosystem Amendment consists of the Draft PEIR and the Final PEIR and their associated appendices. The purpose of the PEIR is to evaluate and disclose the potential significant environmental impacts of the implementation of the proposed Ecosystem Amendment. It is also intended to provide sufficient information to foster informed decision-making by the Council.

## 1.2 Public Participation and Environmental Review Process

On May 11, 2020, the Council filed a Notice of Preparation (NOP) for the Draft PEIR with the State Clearinghouse, and distributed copies of the NOP to public agencies, and to organizations and individuals that requested receipt of the Council’s public notices.

In compliance with Executive Orders N-54-20 and N-8-21, section 8(a), the Council posted the NOP on the Council’s website on May 11, 2020. The issuance of the NOP began a 60-day public comment period. The Council submitted the NOP electronically to the State Clearinghouse’s CEQANet Web Portal (State Clearinghouse #2020050219). The Council requested that the State Clearinghouse notify 26 State agencies via CEQANet. The Council engaged in outreach with individuals and entities, known by the Council to be parties interested in the project, in the manner contemplated by Public Resources Code (Pub. Resources Code) section 21100 et seq. and California Code of

Regulations (Cal. Code Regs.) title 14, section 15000 et seq. The Council sent the following notifications on May 11, 2020:

- ♦ Trustee agency NOP notification emails and letters (via FedEx), as required by CEQA Guidelines section 15082
- ♦ Coastal Zone Management Program agency NOP notification email and letter (via FedEx)
- ♦ Council listserv announcement of NOP availability to all individuals and entities included on the Council listserv
- ♦ Additional interested parties emails (sent to approximately 280 contacts) or hard-copy letters for those without known email addresses (approximately 90 letters were sent via the U.S. Postal Service [U.S. mail])

In addition, the Council distributed a notice of the NOP in the following newsletters:

- ♦ Delta ENews, published May 14, 2020
- ♦ Maven's Notebook, published May 11, 2020

The issuance of the NOP began the 60-day public comment period, which closed on July 10, 2020 and provided notification of a public scoping meeting to be conducted by the Council. A virtual public scoping meeting was held on Thursday, May 28, 2020, from 4:00 to 5:30 p.m. in accordance with Governor's Executive Orders N-25-20, N-29-20, and N-8-213. The purpose of the scoping meeting was to solicit the views of public agencies and the public on the scope and contents of this PEIR and provide a brief overview of the proposed Ecosystem Amendment to the public.

On May 15, 2020, the Council sent an Assembly Bill (AB) 52 notice by email and FedEx to the seven tribes that requested notification of all Council activities. That same day, the Council sent a separate letter containing the NOP to the same tribes by email and FedEx.

In addition to the AB 52 notice described above, the Council also requested a list of California Native American tribes within the Planning Area (see Figure 3-1 in Chapter 3, *Project Description* of the Draft PEIR) from the California Native American Heritage Commission (NAHC) in an effort to provide non-AB 52 notification of the proposed Ecosystem Amendment in the event that tribes would like to provide comments on the project. Based on the information received from the NAHC, the Council sent non-AB 52 notification letters by email to 120 tribal contacts in May 2020.

The Draft PEIR was published and made available to local, State, and federal agencies and to organizations and individuals for review and comment in accordance with CEQA requirements. Notice of the Draft PEIR was also sent directly to persons and agencies that commented on the NOP. The 64-day review period for the Draft PEIR began on Monday, September 27, 2021, and closed on Tuesday, November 30, 2021. The Draft PEIR was made available at the locations identified in Appendix A of the PEIR, as well as on the Council website at: [deltacouncil.ca.gov](http://deltacouncil.ca.gov).



The Council held a public workshop for the Draft PEIR on November 18, 2021. During the workshop, the Council solicited oral comments on the Draft PEIR.

Written comments from the public and public agencies were accepted throughout the public comment period. At the end of the public comment period for the Draft PEIR, a total of 19 comment letters and e-mails were received. There were two commenters at the public workshop.

## 1.3 Requirements for PEIR Certification and Future Steps in Project Approval

Before the Council makes a decision with regard to the proposed project, CEQA Guidelines section 15090(a) requires that the Council first certify that the PEIR has been completed in compliance with CEQA, that the Council has reviewed and considered the information in the PEIR, and that the PEIR reflects the independent judgment and analysis of the Council.

In the event that the Council approves the proposed project, CEQA requires that it file a Notice of Determination (NOD) and adopt appropriate findings as set forth in CEQA Guidelines section 15091. Pursuant to CEQA Guidelines section 15092, a lead agency may only approve or carry out a project for which an EIR has been prepared that identifies one or more significant environmental effects if it makes one or more of the following findings (CEQA Guidelines section 15091(a)):

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

## 1.4 Organization and Format of this Document

The Final PEIR is organized as follows:

- ♦ Chapter 1, Introduction: states the purpose and use of this Final PEIR, explains the purpose of the Draft PEIR and the Final PEIR, and provides an overview of the environmental review process for the PEIR.
- ♦ Chapter 2, Revisions to the Draft PEIR: presents text changes to the Draft PEIR that have been made in response to comments and/or Council staff-initiated

changes that amplify, clarify, or make modifications or corrections. The responses to comments clarify, amplify, and make non-substantive modifications text in the Draft PEIR that do not change the findings or conclusions of the Draft PEIR. Changes in the text are indicated by ~~strikeout~~ where text is removed and by double underline where text is added.

- ◆ Chapter 3, Responses to Comments: includes a list of commenters on the Draft PEIR, all written comments (including emails) received during the public review period for the Draft PEIR, transcripts of public hearings, and responses to comments. This chapter also presents “topical responses” that have been prepared to address frequently raised comments, and to avoid repetition of responses and lengthy duplication of text.
- ◆ Chapter 4, References: provides the list of new references used in the preparation of this Final PEIR. It does not repeat references previously provided in the Draft PEIR, although those references have been cited where necessary to reiterate information sources in response to comments.
- ◆ Appendices: revisions to text of the proposed Ecosystem Amendment. Appendices also include the full text of the exhibits and attachments provided with comment letters submitted on the Draft PEIR.

# Chapter 2

## Revisions to the Draft PEIR

This chapter of the Final Program Environmental Impact Report (PEIR) presents revisions to the Draft PEIR, including those that have been made in response to comments (see Chapter 3 of this Final PEIR) and/or Delta Stewardship Council (Council) staff-initiated changes. This chapter also notes that edits were made to the proposed Ecosystem Amendment (Proposed Project), which are presented in Final PEIR Appendix A, Text of Proposed Delta Plan Ecosystem Amendment. No significant new information was added to the Proposed Project or Draft PEIR as a result of the public comment process. The Final PEIR responds to comments, and clarifies, amplifies, and makes non-substantive modifications to the Proposed Project and the Draft PEIR. It does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact requiring major revisions to the Draft PEIR.

### 2.1 Minor Modifications to the Proposed Project

Since the publication of the Draft PEIR, edits have been made to the Proposed Project that provide further clarification and address public comments on the Proposed Project. The full text of the revisions to the Proposed Project is provided in Final PEIR Appendix A, Text of Proposed Delta Plan Ecosystem Amendment.

### 2.2 Revisions to the Draft PEIR

This section includes a summary of revisions to the Draft PEIR, including those that have been made in response to comments and/or Council staff-initiated changes. Changes in the text are indicated by ~~strikeout~~ where text is removed and by double underline where text is added. The text revisions are organized by the chapter, section, and page number that appear in the Draft PEIR.

# Executive Summary

Table ES-4, Summary of Impacts and Mitigation Measures, includes updates to the following resource area Revised Mitigation Measures (resource area):

- ♦ Aesthetics: 8-1(g)
- ♦ Biological Resources – Terrestrial: 4-2(h), 4-4(d)
- ♦ Cultural Resources: 10-1(a) through (i)
- ♦ Tribal Cultural Resources: 10-1(a) through (i)
- ♦ Recreation: 18-1(a), 18-2 (c), 18-2(d)

Revisions to these mitigation measures can be found in the identified resource area sections below.

Impact statement 5.10-5 in Table ES-4 on page ES-40 is revised as follows for consistency with the impact statement in Section 5.10, *Hazards and Hazardous Materials*:

**5.10-5:** Implementation of projects in response to the proposed Ecosystem Amendment could expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires ~~include the use of equipment that could increase the risk of wildfires if not properly maintained or operated.~~

## Chapter 4 General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment

The fifth bullet on page 4-23 is revised as follows:

- ♦ Development of extensive baseline data before implementing major management actions and construction projects in the Delta (e.g., collection of data on the current state of nutrients, aquatic vegetation, and the food web in areas that may be affected by new wastewater treatment facilities or upgrades to existing facilities, as has been done by the Delta Science Program's Operation Baseline) to understand the effectiveness of restoration actions, to adaptively manage projects and to improve restoration design in the future.



# Chapter 5 Environmental Setting, Impacts, and Mitigation Measures

## 5.2 Aesthetics

The description of Outdoor Recreation Areas starting at the bottom of page 5.2-9 is revised as follows:

### *Outdoor Recreation Areas*

Outdoor recreation is critically important to the Delta economy, and the physical spaces in which recreational activities occur are visual resources contributing to the aesthetic character of the Delta. Recreation areas include State parks, wildlife areas, conservation lands, waterways, and other public open space areas (Figure 5.2-1). In addition, outdoor recreation areas include private docks and informal fishing areas along Delta waterways. ...

Revised Mitigation Measure 8-1(g) on page 5.2-24 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

8-1(g) Conduct only partial vegetative clearing of the construction footprint rather than clearing the entire area; partial clearing would leave islands of vegetation and result in a more natural look. Use irregular clearing shapes with feathered edges instead of hard edges to promote a more natural effect. Temporarily disturbed areas shall be restored to ~~original~~ pre-construction conditions.

## 5.5 Biological Resources – Aquatic

The first paragraph on page 5.5-3 is revised as follows:

... As a consequence of these changes, some years, ~~critical~~ suitable habitat for Delta Smelt in the low-salinity zone (LSZ) can be located above the Sacramento-San Joaquin confluence area where habitat quality is relatively low. The LSZ consists of highly turbid, brackish waters with a salinity of 1 to -6 practical salinity units (psu) (Hobbs et al. 2019). This constriction of ~~critical~~ suitable habitat results in the distribution of Delta Smelt across a smaller area than has been observed historically (Feyrer et al. 2011). This constriction of ~~critical~~ suitable habitat ~~has~~ may also increased the likelihood that segments of the Delta Smelt population will be exposed to chronic and cyclic environmental stressors, or catastrophic events.

The subsection title on page 5.5-4 is revised as follows:

### *Harmful ~~Invasive~~ Non-Native Species*

The third paragraph on page 5.5-4 is revised as follows:

Among the many introduced fish in the Delta, Threadfin Shad and Inland Silversides are some of the most ~~invasive~~ established, although Threadfin Shad

abundance has apparently decreased in recent years (Feyrer et al. 2009; White 2019). ...

This citation was added to the last full sentence on page 5.5-4 as follows:

Predation on Delta Smelt by non-native species is one of the many potential causes of the Delta Smelt decline (Sommer et al. 2007; Nobriga and Smith 2020). ...

The fourth paragraph on page 5.5-5 is revised as follows:

... This complex and altered hydrologic regime leads to a confusing environment for migratory fish (e.g., outmigrating juvenile salmon may end up in the central and southern Delta, where water temperatures are higher and water quality is otherwise unfavorable) and it may draw others, such as Delta Smelt, toward the pumps in the southern Delta (Kimmerer 2008; Grimaldo et al. 2009).

The second sentence of the third paragraph on page 5.5-6 is revised as follows:

... ~~Another~~ Other factors include is sediment “washout” from very high inflows in previous wet water years (Hestir et al. 2016), and proliferation of large beds of submerged aquatic vegetation that are “filtering” sediment (e.g., Brazilian waterweed) (Work et al. 2020), and declining wind speed (Bever et al. 2018).

This citation was added to the second sentence of the fourth paragraph on page 5.5-6 as follows:

... Turbidity reduces Largemouth Bass predation on Delta Smelt (Ferrari et al. 2014) and, because Delta Smelt are visual feeders, the presence of moderately turbid water provides a background that increases the smelt’s visual acuity during daylight hours, leading to increased feeding success (Moyle et al. 2016).

This citation was added to the first sentence of the fifth paragraph on page 5.5-6 as follows:

The water export facilities in the southern Delta, for the SWP and the CVP, have been considered contributing factors to the decline of fishes in the upper San Francisco estuary (Estuary) (Castillo et al. 2012; Kimmerer 2008). ...

This citation was added to the last sentence of the fifth paragraph on page 5.5-6 as follows:

... Consideration of hydrodynamics, water quality, and biological variables in export operations coupled with seasonality and knowledge of fish life history could help reduce fish entrainment (Grimaldo et al. 2009; Grimaldo et al. 2021).

The seventh bullet on page 5.5-7 is revised as follows:

- ♦ "Emerging pollutants" such as fluorine-rich substances (perfluoroalkyl substances, or PFAS) (Lin et al. 2018), ~~ammonium~~, and endocrine-disrupting chemicals

The third paragraph on page 5.5-7 is revised as follows:

~~Contaminant effects are generally species-specific.~~ Pesticides and heavy metals are more likely to directly affect lower trophic levels, with potential negative effects on species composition and food web dynamics. ...

The fourth paragraph on page 5.5-7 is revised as follows:

Recent research has demonstrated that some herbicides commonly used to control invasive aquatic weeds in the Delta, ~~such as penoxsulam, imazamox, fluridone, and glyphosate,~~ can potentially have detrimental effects on Delta Smelt (Jin et al. 2018). ...

The first paragraph on page 5.5-8 is revised as follows:

There are currently many sources of nitrogen for the Delta. Nitrogen can be found in several forms in the aquatic environment, with each form having different sources and different implications for the Delta ecosystem. Nitrogen as a nutrient (nitrate) fuels plant growth, and thus, over-enrichment can favor some species over others, changing the relative abundance of species. Nitrogen as ammonium has also been hypothesized to ~~can~~ inhibit nitrate uptake by phytoplankton, thus limiting primary and secondary productivity; this effect has been the subject of ~~much previous~~ investigations (Foe et al. 2010; Dugdale et al. 2007; Glibert 2010; Berg et al. 2019). However, many recent studies have found that phytoplankton can grow at similar rates using ammonium or nitrate as a nitrogen source, and that phytoplankton growth in the Delta is commonly limited by other factors, such as light availability and clam grazing (Berg et al. 2019).

The last paragraph on page 5.5-11 is revised as follows:

... Delta Smelt, Delta Longfin Smelt, and Sacramento Spittail are estuarine species that spend their life cycle across a range of salinity levels, from freshwater habitat in the upper portions of the Delta to the saline waters of San Francisco Bay, and to the Pacific Ocean (Longfin Smelt) (Lewis et al. 2021). ...

The following paragraph is added after the fourth paragraph on page 5.5-14:

Steelhead represent the anadromous form of the species *Oncorhynchus Mykiss*. While Steelhead are federally listed, the resident (non-anadromous) form of the species, Rainbow Trout, have no listing status. Unlike Steelhead, resident Rainbow Trout complete their entire life cycle in freshwater.

The second paragraph on page 5.5-19 is revised as follows:

Aquatic vegetation in the Primary Planning Area can be separated into ~~two~~ three general categories: floating aquatic vegetation ~~and, submerged aquatic vegetation, and emergent vegetation~~ (Ta et al. 2017). ...

The fourth paragraph on page 5.5-25 is revised as follows:

... Striped Bass and American Shad also occur downstream of RBDD Colusa. ...

The fifth paragraph on page 5.5-29 is revised as follows:

The Mokelumne River is a major tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. Runoff in the watershed is captured in three major impoundments (Camanche, Pardee, and Salt Springs reservoirs). ...

## 5.6 Biological Resources – Terrestrial

The fourth complete paragraph on page 5.6-51 is revised as follows:

The Mokelumne River is a major tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. The variety of riparian habitats along the Mokelumne River supports numerous bird species. ...

Revised Mitigation Measure 4-2(h) on pages 5.6-86 and 5.6-87 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

4-2(h) Conduct preconstruction surveys (by a qualified botanist) to evaluate the potential for special-status plant habitat at the project site, should suitable habitat for any special-status plant species be identified. ~~Protocol-level surveys for potentially occurring special-status plants that could be removed or disturbed shall occur during the respective blooming period(s) for the plant(s) that could be present at the project site.~~ Protocol-level surveys shall be conducted in accordance with the latest edition of DFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*.

Revised Mitigation Measure 4-4(d) on page 5.6-96 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

4-4(d) Protect, restore, and enhance connectivity of habitats, including but not limited to wetland and riparian habitats that function as migration corridors for wildlife species (similar to how it has been implemented through programs such as the California Essential Habitat Connectivity Project). Acquire areas with potential to increase connectivity between existing habitats, protect these areas in perpetuity through the acquisition of conservation easements, deed restrictions, or similar tools, and restore the habitat for wildlife species in these areas. As an alternative, participate in existing mitigation banks or HCPs that provide suitable habitat for affected wildlife species. Habitat restoration might be accomplished by establishing suitable hydrology or other physical conditions for desirable vegetation, planting desirable vegetation, fencing and managing grazing, and other means.

## 5.7 Cultural Resources

The following paragraph is added after Table 5.7-4 on page 5.7-34:

The Delta and its resources have immense cultural value to California Native American tribes with connections to the Delta. These tribes are referred to as traditionally and culturally affiliated tribes. In addition, tribes in the Extended Planning Area may have interests in the Delta due to their connection to



indigenous lifeways and cultural resources. As partners involved in individual restoration projects, tribes can provide traditional knowledge (TK) that can improve restoration outcomes, while respecting and enhancing cultural values and properties. This input should be obtained and incorporated early in the design process and throughout the timeframe of individual projects, ideally as part of a coordinated and collaborative effort to integrate tribal input into core design decisions.

In order to obtain and incorporate early input into the design process of restoration projects from culturally affiliated tribes of the Delta the following new measure is added to Revised Mitigation Measure 10-1 in Section 5.7 *Cultural Resources* and Section 5.17 *Tribal Cultural Resources*:

10-1(a) California Native American tribes with which the lead agency is required to consult with under AB52 that are on the contact list of traditionally or culturally affiliated tribes of the Delta maintained by the California Native American Heritage Commission (pursuant to Pub. Res. Code § 21073), and have requested to be notified of all projects (pursuant to Pub. Res. Code 21080.3.1) shall be coordinated with early in the process during the design phase of ecosystem restoration projects. This coordination is intended to improve design, project resiliency, and respect, as well as enhance cultural values, and integrate traditional and local ecological knowledge.

In order to require cultural resources sensitivity training in coordination with California Native American tribes traditionally and culturally affiliated with the Delta the following new measure is added to Revised Mitigation Measure 10-1 in Section 5.7 *Cultural Resources* and Section 5.17 *Tribal Cultural Resources*:

10-1(b) Prior to project construction, a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, in coordination with California Native American tribes traditionally and culturally affiliated with the Delta, shall develop a Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program for all construction and field workers involved in project-related ground-disturbing activities. The program shall include a presentation that covers, at a minimum, the types of cultural resources and tribal cultural resources common to the area, regulatory protections for such resources, and the protocol for unanticipated discovery of archaeological resources and potential tribal cultural resources. An archaeologist and representative from a culturally affiliated California Native American Tribe shall provide an in-person or, if in-person is not feasible, video-conference-based training presenting the Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program to all personnel working in areas of project ground-disturbing activities prior to working in these areas. Written materials associated with the Program shall be provided to project personnel, as appropriate.

Adding these two new measures, 10-1(a) and 10-1(b), has changed the numbering of Revised Mitigation Measure 10-1 in Draft PEIR Section 5.7 *Cultural Resources*. As a

result, all references in the Draft PEIR to Revised Mitigation Measures 10-1(a) through (g) are revised to refer to Revised Mitigation Measures 10-1(a) through (i).

The last paragraph on page 5.7-27 is revised as follows:

A prehistoric archaeological resource that qualifies as a historical resource under CEQA generally qualifies for listing under Criterion 4 of the CRHR (CEQA Guidelines section 15064.5(a)(3)(D)) (NRHP Criterion D), although prehistoric resources can qualify for any CRHR/NEHP criterion. ...

The fourth paragraph on page 5.7-38 is revised for consistency with the CEQA Guidelines as follows:

Archaeological resources include any material remains of human life or activities that are at least ~~400~~ 50 years of age, and that are of archaeological interest. ...

Revised Mitigation Measure 10-1(a) on pages 5.7-40 and 5.7-41 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised and renumbered as follows:

10-1(~~ac~~) Before any ground-disturbing activities begin, conduct intensive archaeological surveys, including and subsurface investigations if warranted, to identify the locations, extent, and integrity of presently undocumented archaeological, tribal cultural, and landscape resources that may be located in areas of potential disturbance. Conduct tribal consultation to identify and evaluate the presence and significance of tribal cultural resources and landscapes. Surveys and subsurface investigations where tribes have identified tribal cultural resources shall include tribal monitors in addition to archaeologists. In addition, if ground-disturbing activities are planned for an area where a previously documented prehistoric archaeological site has been recorded but no longer may be visible on the ground surface, conduct test excavations to determine whether intact archaeological subsurface deposits are present. Also conduct surveys at the project site for the possible presence of cultural landscapes and traditional cultural properties.

Revised Mitigation Measure 10-1(b) on page 5.7-41 and in Table ES-4, Summary of Impacts and Mitigation Measures, is renumbered as follows:

10-1(~~bd~~) Prior to project construction, a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, in coordination with California Native American tribes traditionally and culturally affiliated with the Delta, shall develop a Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program for all construction and field workers involved in project-related ground-disturbing activities. The program shall include a presentation that covers, at a minimum, the types of cultural resources and tribal cultural resources common to the area, regulatory protections for such resources, and the protocol for unanticipated discovery of archaeological resources and potential tribal cultural resources. An archaeologist and representative from a culturally affiliated California Native American Tribe shall provide an in-person or, if in-person is not

feasible, video-conference-based training presenting the Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program to all personnel working in areas of project ground-disturbing activities prior to working in these areas. Written materials associated with the Program shall be provided to project personnel, as appropriate.

Revised Mitigation Measure 10-1(c) on page 5.7-41 and in Table ES-4, Summary of Impacts and Mitigation Measures, is renumbered as follows:

10-1(~~ce~~) If CRHR-eligible archaeological resources, tribal cultural resources, or cultural landscapes/properties are present and would be physically impacted, specific strategies to avoid or protect these resources should be implemented if feasible. These measures may include:

- i. Planning construction to avoid the sensitive sites
- ii. Deeding the sensitive sites into permanent conservation easements
- iii. Capping or covering archaeological sites
- iv. Planning parks, green space, or other open space to incorporate the sensitive sites

Revised Mitigation Measure 10-1(d) on page 5.7-41 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised and renumbered as follows:

10-1(~~df~~) If federal agencies are participants in the project and Section 106 of the National Historic Preservation Act applies, conduct formal consultation with the State Historic Preservation Officer and ~~the Native American community~~ California Native American tribes. Potential adverse effects on cultural resources recommended as eligible for listing in the NRHP will be resolved through the development of a memorandum of agreement and/or a program-level agreement.

Revised Mitigation Measure 10-1(e) on page 5.7-41 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised and renumbered as follows:

10-1(~~eg~~) As part of efforts to identify, evaluate, and consider cultural resources, including prehistoric sites, Native American human remains, and traditional cultural properties, California Native American tribes shall be consulted. The California Native American Heritage Commission (NAHC) shall be asked to provide a list of contacts for Native American tribes who should be contacted concerning an identified future project. The NAHC shall also be asked to search its Sacred Lands Files. California Native Americans tribes identified by the NAHC ~~would~~ shall be contacted by letter to consult on the identification, evaluation, and treatment of tribal ~~request information on cultural resources of importance. They also shall be asked to identify concerns they have about the project. THPOs [Tribal Historic Preservation Officers] and Tribal Administrators of federally recognized tribes shall be contacted and asked to search their files and provide information necessary for the identification and consideration of cultural resources.~~

Revised Mitigation Measure 10-1(f) on pages 5.7-41 and 5.7-42 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised and renumbered as follows:

10-1(f) Before any project-specific ground-disturbing activities begin, conduct investigations to identify submerged cultural resources. These investigations would include review of State Lands Commission (SLC) Shipwrecks Database and other SLC files, and remote sensing surveys conducted under the direction of a qualified maritime archaeologist. Title to all abandoned shipwrecks, archaeological sites, and historic cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the SLC. If avoidance of significant submerged cultural resources is not feasible, a permit from SLC may be necessary to conduct resource documentation and possible salvage of artifacts, ship components, and other data and objects.

Revised Mitigation Measure 10-1(g) on page 5.7-42 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised and renumbered as follows:

10-1(g) If potentially CRHR-eligible Native American or historic-era archaeological resources, including submerged or buried shipwrecks or other maritime-related cultural resources, are discovered during construction activities, work shall halt within 100 feet of the discovery until the find can be evaluated by a qualified archaeologist or maritime archaeologist as appropriate. A qualified archaeologist, which is defined as a person meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, shall be immediately informed of the discovery. In addition, SLC shall be consulted. The qualified archaeologist shall inspect the discovery. If the qualified archeologist determines that the resource is or is potentially Native American in origin, culturally affiliated California Native American Tribes shall be contracted to assess the find and determine whether it is potentially a tribal cultural resource.

Revised Mitigation Measure 10-2(a) on page 5.7-45 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

10-2(a) In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, the contractor shall immediately halt ~~potentially damaging excavation~~ all ground disturbing activities within 100 feet ~~in the area~~ of the burial and notify the county coroner ~~and a professional archaeologist~~ to determine the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or State lands (Health & Saf. Code section 7050.5[b]). If the coroner determines that the remains are those of a Native American, the coroner must contact the NAHC by telephone within 24 hours of making that determination (Health & Saf. Code section 7050[c]). Native American human remains are potentially considered Tribal Cultural Resources, and in the event of their discovery, Mitigation Measure 10-1(b) through (e) shall apply as appropriate.

## 5.10 Hazards and Hazardous Materials

Impact statement 5.10-5 in Table 5.10-2 on page 5.10-29 is revised as follows for consistency with the threshold of significance and the impact discussion presented in the section:

**5.10-5:** Implementation of projects in response to the proposed Ecosystem Amendment could expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires ~~include the use of equipment that could increase the risk of wildfires if not properly maintained or operated.~~

Impact statement 5.10-5 on page 5.10-46 is revised as follows for consistency with the threshold of significance:

**Impact 5.10-5: Implementation of projects in response to the proposed Ecosystem Amendment could expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires.**

## 5.11 Hydrology and Water Quality

The third paragraph on page 5.11-3 is revised as follows:

California, in an average water year (similar to 2010), receives about 200 million acre-feet of water from precipitation and imports from the Colorado River from ~~Colorado, Oregon, and Mexico~~. Approximately 50–60 percent of this total supply is used by native vegetation; evaporates to the atmosphere; provides some of the water for agricultural crops and managed wetlands (referred to as “effective precipitation”); or flows to Oregon, Nevada, the Pacific Ocean, or salt sinks, such as saline groundwater aquifers and the Salton Sea.

Figure 5.11-2 SWP and CVP Facilities in California on page 5.11-5 in Section 5.11 Hydrology and Water Quality of the Draft PEIR is revised as follows:

1 **Figure 5.11-2**  
2 **SWP and CVP Facilities in California**







The second paragraph on page 5.11-6 is revised as follows:

... Local surface storage and deliveries, together with reuse, account for about 40 percent of the state's developed water supplies. Groundwater is also a significant resource, supplying about ~~35~~ 40 percent of the state's water needs, and ~~40 percent or more~~ during droughts (PPIC 2017). ...

The first paragraph on page 5.11-14 is revised as follows:

Nutrients, primarily nitrogen compounds (N) and phosphorus (P) compounds, may, in combination with increased water temperature and reduced flow rates, affect primary production in the Delta (Central Valley Regional Water Board 2018) and may ~~trigger~~ contribute to an excessive growth of algae. Primary sources of nutrients are erosion, agricultural runoff, urban runoff, and treated wastewater effluent. ...

The third paragraph on page 5.11-18 is revised as follows:

The primary consumptive water users in the Delta are agricultural and urban. These users divert water from the Delta and its tributaries at over 1,800 diversion points and may not have fish screens or meters. These diversions can total more than 5,000 cubic feet per second (cfs) in July and August (DWR 2009b). Return flows from these diversions are discharged back to the Delta. Local agencies, private entities, and agricultural users operate their own diversion infrastructure. After local users, the major users of Delta surface water are the CVP and SWP. In Suisun Marsh, there are 376 diversion points (although some are inactive) (SWRCB 2022) and the managed wetlands in the marsh receive water supplies through riparian and appropriative water rights. ...

The fourth paragraph on page 5.11-47 is revised as follows:

The Mokelumne River originates in the Sierra Nevada and drains a watershed of approximately 661 square miles. It is a ~~major~~ tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. ...

The fifth paragraph on page 5.11-62 is revised as follows:

Recently, urban areas in the San Joaquin Valley have been investigating some water recycling and water conservation measures. For example, water metering did not occur until recently in the city of Fresno. With metering and other measures in place, the City of Fresno has a goal to increase water savings via water conservation by 20 percent. The City of Modesto and the City of Turlock have implemented a new water recycling project referred to as the North Valley Regional Recycled Water Program. Through this program, the City of Modesto and the City of Turlock discharge treated wastewater effluent through a joint outfall to the Delta-Mendota Canal for transport downstream to agricultural water users (Reclamation 2016).



The first paragraph on page 5.11-63 is revised as follows:

... This water goes to Alameda and Contra Costa counties in the East Bay. The Mokelumne River supplies more than 90 percent of the water supply to the EBMUD, serving ~~almost 1.3 million people~~ approximately 1.4 million people. The SFPUC and other nearby cities receive water through the Hetch Hetchy Aqueduct from the Tuolumne River in Yosemite.

The fifth paragraph on page 5.11-63 is revised as follows:

~~A joint conjunctive use and groundwater banking project was evaluated by the East San Joaquin Parties Water Authority and the EBMUD, named the Mokelumne Aquifer Recharge and Storage Project (Northeastern San Joaquin County GBA 2004:34). The goal was to store surface water underground in wet years, and in dry years, the EBMUD would be allowed to extract and export the recovered water supply (Northeastern San Joaquin County GBA 2004:34). Several studies have concluded that the test area is suitable for recharge and recovery of groundwater. However, more testing needs to be done to further evaluate the feasibility of this project. Groundwater banking efforts are underway in Eastern San Joaquin County with the Demonstration Recharge Extraction and Aquifer Management (DREAM) Pilot Project. Pending further evaluation of the results of the DREAM Pilot Project, EBMUD, North San Joaquin Water Conservation District (NSJCWCD), San Joaquin County, and the Eastern Water Alliance may pursue a larger, longer term groundwater banking project. The DREAM Pilot Project provides NSJCWCD with up to 1,000 AF of EBMUD surface water from the Mokelumne River that participating landowners use for irrigation in lieu of pumping groundwater from the Eastern San Joaquin Subbasin; thereby, storing groundwater for future use. During dry years, EBMUD can recover up to half of the banked groundwater for use within its service area.~~

The second paragraph on page 5.11-76 is revised as follows:

... Importation of surface water via the Hetch Hetchy and South Bay aqueducts and the development of an artificial recharge program have favored the rise of groundwater levels since 1965 halting permanent subsidence around 1970 and resulting in many decades of sustainable conditions (DWR 2004i:2, SCVWD 2016). ...

The third paragraph on page 5.11-77 is revised as follows:

In the southern Bay Area, groundwater and surface water are connected through instream and offstream artificial recharge projects, in which surface water is delivered to water bodies that permit the infiltration of water to recharge ~~overdrafted~~ aquifers. ...

The third paragraph on page 5.11-77 is revised as follows:

... Surface water is mostly losing to groundwater, because of current hydrologic conditions and groundwater pumping ~~as the groundwater basins have been pumped extensively~~ for various uses.

The last paragraph on page 5.11-78 is revised as follows:

The Bay Area receives imported water from the SWP through the North Bay Aqueduct and the South Bay Aqueduct, and receives CVP San Felipe Division water via the Pacheco Tunnel and a series of conduits ~~San Felipe Canal~~ previously stored in the San Luis Reservoir.

The fourth paragraph on page 5.11-79 is revised as follows:

... The South Bay Aqueduct conveys water from the Delta to Alameda and Santa Clara counties. SCVWD water supplies include SWP water via the South Bay Aqueduct, CVP water via the San Felipe Division of the CVP, and water delivered directly to retail suppliers from the SFPUC's regional water system (Hetch Hetchy Aqueduct and Bay Area watershed). The Hetch Hetchy Aqueduct ~~also~~ supplies water to San Francisco and San Mateo County. ...

The fourth paragraph on page 5.11-79 is revised as follows:

~~... Some water for agricultural uses within Monterey, San Benito, San Mateo, and Santa Cruz eCounties~~ also receives imported CVP water from the San Felipe Division of the CVP for agricultural use.

The fifth paragraph on page 5.11-81 is revised as follows:

The ACWD, SCVWD, and Zone 7 Water Agency currently have groundwater banking programs. ~~The EBMUD and the City of Napa are investigating opportunities for groundwater banking.~~

The second paragraph on page 5.11-88 is revised as follows:

... However, urban runoff, wastewater discharges, agricultural tailwater, and groundwater seepage are sources of surface flows during the dry season. ~~During the past 30 years, dry weather flows have increased due to increased runoff from urban development (DWR 2009a:SC-22).~~

The last paragraph on page 5.11-88 is revised as follows:

Salinity also affects recycled water use because it must either be removed for some uses, or be reduced to prevent habitat, plant, and groundwater degradation. High salt concentrations can affect groundwater recharge capability, and also affect crop yield by reducing or increasing the ability of minerals and nutrients to be absorbed by the plant, thereby adversely affecting growth rates.  
...

The second paragraph on page 5.11-92 is revised as follows:

... The CRA system consists of 92 miles of tunnels, 63 miles of concrete canals, 54 miles of concrete conduits, 29 miles of siphons and five5 pumping plants, ~~16 hydroelectric plants, 9 reservoirs (over 1 million acre-foot of total capacity), and water treatment plants~~ to move water to Metropolitan member agencies (Metropolitan 2017:1). ~~The CRA can supplies Metropolitan member agencies.~~

A description of the Coachella Canal was added on the fourth paragraph on page 5.11-92 as follows:

The All-American Canal supplies water to the Coachella Valley Water District and Imperial Irrigation District. Colorado River supplies are diverted at The canal system consists of the Imperial Diversion Dam and Desilting Works into the 80-mile-long All-American Canal, then into the 123-mile-long Coachella Canal and appurtenant structures including a number of drop structures. The system has the capacity, ~~through water diversions from the Colorado River at Imperial Dam,~~ to provide irrigation water for nearly 600,000 acres of land in the Imperial and Coachella valleys (Reclamation 2017c). Imperial Dam and the All-American Canal are operated by Imperial Irrigation District; the Coachella Canal is operated by Coachella Valley Water District.

Table 5.11-14 on page 5.11-97 is revised as follows:

**Table 5.11-14**

**Southern California Water Supply Transfers and Exchange Agreements**

Arvin-Edison Water Management Program	<u>Storage of up to 250,000 acre-feet of water in Arvin-Edison groundwater basin during years when SWP is available for extraction during drier periods. Metropolitan amended the groundwater storage program with Arvin-Edison Water Storage District in 2008 to include the South Canal Improvement Project. The project increases the reliability of Arvin-Edison returning higher water quality to the California Aqueduct. In addition, Metropolitan and Arvin-Edison often enter into annual operational agreements to optimize program operations in any given year. The program storage capacity is 350,000 acre-feet.</u>
<u>Central Valley/State Water Project (SWP) Storage and Transfer and Program</u>	<u>In dry, below-normal conditions, Metropolitan has increased the supplies received from the California Aqueduct by developing flexible Central Valley/SWP storage and transfer programs. Metropolitan has had success in purchasing options from Sacramento Valley irrigators of 145 thousand acre-feet in 2003, 113 thousand acre-feet from Sacramento Valley irrigators (as part of State Water Contractors Agreement for 145 thousand acre-feet of options) in 2005, 40 thousand acre-feet in 2008, and 34 thousand acre-feet in 2009. Also, Metropolitan has been successful in purchasing water for storage in the Central Valley. In 2009, 300 thousand acre-feet was purchased and stored as part of this program. Metropolitan has utilized approximately 122,000 acre-feet to supplement its SWP supplies during the recent 2016-2020 period. Of this total, approximately 90,000 acre-feet are from SWP storage program extractions in Semitropic, Arvin, Kern Delta, and Mojave; 13,000 acre-feet are from the San Gabriel Valley Municipal Water District program; and 19,000 acre-feet of SWP transfer supplies were purchased from the Yuba water purchase programs.</u>
<u>Chuckwalla Groundwater Storage Program</u>	<u>Colorado River Aqueduct water would be stored in the Upper Chuckwalla Groundwater Basin for recovery during droughts. A maximum of 150,000 acre-feet of storage is available from this project. This project is currently on hold due to drought conditions on the Colorado River.</u>
<u>Santa Clarita Valley Water Agency Castaic Lake Water Agency/Buena Vista and Rosedale-Rio Bravo Water Storage Districts Agreement</u>	<u>On January 1, 2018, Castaic Lake Water Agency, Newhall County Water District, Santa Clarita Water Division, and Valencia Water Company merged to become Santa Clarita Valley Water Agency. The Castaic Lake Water Agency-Santa Clarita Valley Water Agency has developed a long-term water agreement for 11,000 acre-feet per year of water from the Buena Vista and Rosedale-Rio Bravo Water Storage Districts. This agreement allows exchange or recharge of Kern River for SWP water.</u>

**Table 5.11-14**  
**Southern California Water Supply Transfers and Exchange Agreements**

Desert Water Agency/ Coachella Water District SWP Table A Water Transfer	This agreement transfers water costs to Desert Water Agency to reduce Metropolitan's fixed water costs.
Hayfield Groundwater Storage Program	<del>Colorado River Aqueduct water is stored in the Hayfield Groundwater Basin, which is located east of Palm Springs in Riverside County, for future extraction. Currently 70,000 acre-feet is in storage, but 400,000 acre-feet of storage is planned.</del>
Kern-Delta Metropolitan Water Management Program	Storage of up to 250,000 acre-feet of SWP water in Kern-Delta's groundwater basin with a right to retrieve up to 50,000 acre-feet per year.
<del>Lower Coachella Valley Groundwater Storage Program</del>	<del>Advance delivery and storage of CRA water for an exchange agreement with Coachella Valley Water District and Desert Water Agency for SWP water. Maximum storage is 500,000 acre-feet. This project is currently on hold due to drought conditions on the Colorado River.</del>
Mojave/Metropolitan Demonstration Water Exchange Program	<u>Exchange of SWP water on the basis of 1 acre-foot of return water for each acre-foot of water previously delivered to Mojave Water Authority. Metropolitan entered into a groundwater banking and exchange transfer agreement with Mojave Water Agency on October 29, 2003. This agreement was amended in 2011 to extend the term of the program through 2035 and to allow for the cumulative storage of up to 390,000 acre-feet.</u>
Quantification Settlement Agreement transfers	Transfer of water from Imperial Irrigation District (IID) to San Diego County Water Authority (SDCWA) based on water conservation measures including lining of the All-American and Coachella canals (77,000 acre-feet per year) and 16,000 acre-feet per year from other canal lining. The Quantification Settlement Agreement also includes other water transfers of water including 10,000 acre-feet per year (ramping up to 200,000 acre-feet per year for up to 75 years) from IID to SDCWA, 110,000 acre-feet per year from IID to Metropolitan, 103,000 acre-feet per year from IID to Coachella Valley Water District, and between 25,000 and 111,000 acre-feet annually from the Palo Verde Irrigation District to Metropolitan.
Semitropic Water Banking and Exchange Program	<del>Storage of SWP in Semitropic WSD's groundwater basin during wet years, which can be withdrawn during dry years for supply. Maximum storage capacity is 1,650,000 acre-feet. Metropolitan has a groundwater storage program with Semitropic Water Storage District located in the southern part of the San Joaquin Valley. The maximum storage capacity of the program is 350,000 acre-feet.</del>
Tulare Basin Storage District Groundwater Replenishment Project	The Coachella Valley Water District has purchased 9,900 acre-feet per year of SWP water from the Tulare Lake Basin Water Storage District for groundwater replenishment. The Coachella Valley Water District also has purchased 16,000 acre-feet per year of SWP water from the Berrenda Mesa Water District.
Yuba Dry Year Water Purchase Program	<u>Metropolitan entered into an agreement with Yuba County Water Agency allows purchase of dry year water through 2035. In December 2007, Metropolitan entered into an agreement with DWR providing for Metropolitan's participation in the Yuba Dry Year Water Purchase Program between Yuba Water Agency and DWR. This program provides for transfers of water from the Yuba Water Agency during dry years through 2025.</u>

1 Sources: Metropolitan 2010; Metropolitan 2021, Semitropic 2020b

2 The discussion of the Coordinated Operations Agreement page on pages 5.11-105  
3 through 5.11-107 is revised as follows:

4 **Coordinated Operations Agreement**

5 The SWP and CVP use a common water supply in the Delta. The associated  
6 water rights are conditioned by the SWRCB to protect the beneficial uses of  
7 water individually and jointly for the SWP and CVP for the protection of beneficial

1 uses in the Sacramento Valley and the Delta estuary. The Coordinated  
2 Operations Agreement (COA) (Public Law 99-546), signed in 1986, defines the  
3 SWP and CVP facilities and their water supplies; sets forth procedures for  
4 coordination of operations; identifies formulas for sharing joint responsibilities for  
5 meeting Delta standards, as the standards existed in SWRCB Decision 1485  
6 (D-1485), and other legal uses of water (as described below in the discussion of  
7 State regulatory processes); identifies how unstored flow will be shared; sets up  
8 a framework for exchange of water and services between the SWP and CVP;  
9 and provides for periodic review of the agreement. In December 2018, DWR and  
10 Reclamation subsequently negotiated an addendum to the 1986 COA that was  
11 issued in December 2018.

12 In-basin uses, or legal uses of water in the Sacramento Basin, as defined by the  
13 COA, include water required under the SWRCB D-1485 Delta standards for  
14 water quality protection for agricultural, municipal and industrial, and fish and  
15 wildlife uses. The SWP and CVP are obligated to ensure that water is available  
16 for these uses, but the degree of obligation is dependent on several factors and  
17 changes throughout the year.

18 “Balanced water conditions” are defined in the COA as periods when it is  
19 mutually agreed that releases from upstream reservoirs plus unregulated flows  
20 approximately equal the water supply needed to meet Sacramento Valley in-  
21 basin uses plus exports. “Excess water conditions” are periods when it is  
22 mutually agreed that releases from upstream reservoirs plus unregulated flow  
23 exceed Sacramento Valley in-basin uses plus exports.

24 ~~During excess water conditions, sufficient water is available to meet all beneficial~~  
25 ~~needs, and the CVP and SWP are not required to supplement the supply with~~  
26 ~~water from reservoir storage. Under Article 6(g) of the COA, Reclamation and~~  
27 ~~DWR have the responsibility (during excess water conditions) to store and export~~  
28 ~~as much water as possible, within physical, legal, and contractual limits. During~~  
29 ~~balanced water conditions, the SWP and CVP share the responsibility of meeting~~  
30 ~~in-basin uses. When water must be withdrawn from reservoir storage to meet in-~~  
31 ~~basin uses, 75 percent of the responsibility is borne by the CVP and 25 percent~~  
32 ~~is borne by the SWP. When unstored water is available for export while balanced~~  
33 ~~water conditions exist, the sum of CVP stored water, SWP stored water, and the~~  
34 ~~unstored water for export is allocated 45 and 55 percent to the SWP and CVP,~~  
35 ~~respectively.~~

36 ~~Implementation of the COA principles has evolved since 1986 due to changes in~~  
37 ~~facilities (including the North Bay Aqueduct), as well as new water quality and~~  
38 ~~flow standards established by SWRCB D-1641 (described below in the~~  
39 ~~discussion of State regulations) and the USFWS and NMFS BiOps described~~  
40 ~~below). For example, water temperature controls at Shasta, Trinity, and~~  
41 ~~Whiskeytown dams have changed the pattern of storage and withdrawals for the~~  
42 ~~purpose of improving temperature control and managing cold-water pool~~  
43 ~~resources.~~

Such constraints have reduced the CVP's capability to respond efficiently to changes in Delta export or outflow requirements. Periodically, temperature requirements have caused the timing of the CVP releases to be significantly mismatched with Delta export capability, resulting in loss of water supply. On occasion, and in accordance with Articles 6(h) and 6(i) of the COA, the SWP has been able to export water released by the CVP for temperature control in the Sacramento River. The installation of the Shasta temperature control device has significantly improved Reclamation's ability to match reservoir releases and Delta needs.

Another example of requirements not included in the 1986 COA is the objectives in the 1995 Bay-Delta Plan, VAMP, and SWRCB in D-1641 (described below). The 1986 COA water supply sharing formula was used to meet D-1641 Delta outflow and salinity-based standards. SWRCB D-1641 also contains "export limitation" criteria such as the export-to-inflow ratios and San Joaquin River pulse period "export limits."

The 1986 COA affirmed the SWP's commitment to provide replacement export capacity for restrictions to the CVP operations in May and June under SWRCB D-1485. Subsequent changes included in SWRCB D-1641, water demand, and other export constraints reduced the available surplus capacity at the Banks Pumping Plant up to 195,000 acre-feet of pumping capacity, and diminished the water delivery anticipated by the CVP under the 1986 COA framework. The reductions in water delivery accomplishments are considered to be part of CVPIA (b)(2) water.

On June 1, 2016, Reclamation and DWR began review of the COA as prescribed in Article 14(a), for the purpose of determining whether revisions to COA were warranted. The process was initiated following a series of preliminary meetings that were conducted since August 2015. From June 2016 through July 2018, numerous meetings were held, which also included CVP and SWP contractors. In August 2018 Reclamation issued a notice of negotiation, and DWR and Reclamation subsequently negotiated an amendment to the COA that was issued in December 2018. Key Sections of the COA that were updated in 2018 were: Article 6(c) on sharing of responsibility for meeting in-basin use; Article 10(b) on CVP use of the Banks Pumping Plant; Article 10(i) on sharing of capacity under export restrictions; and Article 14(a) on the periodic review.

The last paragraph on page 5.11-114 and the first paragraph on page 5.11-115 are revised as follows:

Pursuant to Wat. Code sections 10610–10657, as last amended by SB 606318 in 2018 2004, the Urban Water Management Planning Act requires all urban water suppliers with more than 3,000 service connections or water use of more than 3,000 acre-feet annually to update their submit an urban water management plans (UWMP) to DWR at least once every five years demonstrating water supply reliability in normal, single dry, and multiple dry water years and update the plan on or before December 31 in years ending in 5 and 0. SB 606318 is the 18th amendment to the original bill requiring a UWMP, which was initially

~~enacted in 1983. Amendments to SB 318 have focused on ensuring that the UWMP emphasizes and addresses drought contingency planning, water demand management, reclamation, and groundwater resources.~~

## 5.15 Recreation

The third paragraph on page 5.15-5 is revised as follows:

... The planning area for the Delta Trail includes the ~~proposed~~ Sacramento–San Joaquin Delta National Heritage Area which was designated in 2019 as the first National Heritage Area (NHA) in California (DPC 2015).

The third paragraph on page 5.15-20 is revised as follows to be consistent with the example provided for covered actions:

... For example, it may not be feasible to ~~construct new/permanent replacement recreational facilities~~ direct displaced users to underused facilities, or signage directing recreationists to an underused facility may be dismissed by recreationists if the alternate facility is far away. ...

Revised Mitigation Measure 18-2(c) on page 5.15-20 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

18-2(c) If the increase in use is temporary, the condition of the facilities prior to construction shall be documented, and once use returns to existing conditions, degraded facilities shall be rehabilitated or restored to their original pre-construction condition.

Revised Mitigation Measure 18-2(d) on page 5.15-20 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

18-2(d) Where impacts to existing facilities are unavoidable, affected facilities shall be restored to their original pre-construction condition once project construction activities are complete. If this is not feasible, new permanent or replacement facilities shall be constructed that are similar in type and capacity.

Revised Mitigation Measure 18-1(a) on page 5.15-23 and in Table ES-4, Summary of Impacts and Mitigation Measures, is revised as follows:

18-1(a) Projects shall be sited in areas that will not impair, degrade, or eliminate recreational facilities and opportunities. If this is not feasible, projects shall be designed such that recreational facilities and access to recreational opportunities (including bird-watching, hunting, recreational fishing, walking, and on-water recreation (e.g., boating or kayaking)) will be avoided or minimally affected. Once project construction activities have been completed, any affected recreational facilities and opportunities should be restored to original pre-construction conditions if possible. Where impacts to existing recreational facilities and opportunities are unavoidable, new permanent or replacement facilities and opportunities shall be constructed

that are similar in type and capacity, and access to recreational opportunities restored, if feasible.

## 5.17 Tribal Cultural Resources

The fourth paragraph on page 5.17-1 is revised as follows:

... Tribal cultural resources also include prehistoric archaeological sites and may include human remains as discussed in Section 5.7, *Cultural Resources*; ethnographic sites; and historic-era landscapes and sites occupied, used, or spiritually and culturally valued by Native Americans.

The following paragraph is added after Table 5.17-1 on page 5.17-7:

The Sacramento-San Joaquin Delta (Delta) and its resources have immense cultural value to California Native American tribes with connections to the Delta. These tribes are referred to as traditionally and culturally affiliated tribes. In addition, tribes in the Extended Planning Area may have interests in the Delta due to their connection to indigenous lifeways and cultural resources. As partners involved in individual restoration projects, tribes can provide traditional knowledge (TK) that can improve restoration outcomes, while respecting and enhancing cultural values and properties. This input should be obtained and incorporated early in the design process and throughout the timeframe of individual projects, ideally as part of a coordinated and collaborative effort to integrate tribal input into core design decisions.

Adding the two new measures, 10-1(a) and 10-1(b), described above under **5.7 Cultural Resources**, has changed the numbering of Revised Mitigation Measure 10-1 in Draft PEIR Section 5.17 *Tribal Cultural Resources*. As a result, all references in the Draft PEIR to Revised Mitigation Measures 10-1(a) through (g) are revised to refer to Revised Mitigation Measures 10-1(a) through (i).

## 5.18 Utilities and Public Services

The last paragraph on page 5.18-2 is revised as follows:

Municipal sewer systems consist of sewer collection pipelines (and appurtenant features), treatment facilities, pump stations, lift stations, and outfall structures or disposal systems. ...

Table 5.18-2 on page 5.18-3 is revised as follows:

Sacramento Regional County Sanitation District (or Regional San)

Sacramento Area Sewer District (or SASD)

## 5.19 Wildfire

The third paragraph on page 5.19-12 is revised as follows:

Although the majority of the Primary Planning Area is located in the Delta where the risk of fire is considered low and the topography is relatively flat, vegetation and peat soils could be present in construction and/or staging areas. ...



# Chapter 11 References

The following references are added to Draft PEIR Section 5.5 Biological Resources – Aquatic Resources:

Bever, Aaron J., Michael L. MacWilliams, and David K. Fullerton. 2018. "Influence of an observed decadal decline in wind speed on turbidity in the San Francisco Estuary." Estuaries and Coasts 41.7 (2018): 1943-1967.

Ferrari, M. C., Ranaker, L., Weinersmith, K. L., Young, M.J., Sih, A., & Conrad, J. L. 2014. Effects of turbidity and an invasive waterweed on predation by introduced largemouth bass. Environmental Biology of Fishes, 97(1),79-90.

Grimaldo, L. F., Smith, W. E., & Nobriga, M. L. 2021. Re- Examining Factors That Affect Delta Smelt (*Hypomesus transpacificus*) Entrainment at the State Water Project and Central Valley Project in the Sacramento-San Joaquin Delta. San Francisco Estuary and Watershed Science, 19(1).

Kimmerer, W. J. 2008. Losses of Sacramento River Chinook Salmon and Delta Smelt to entrainment in water diversions in the Sacramento–San Joaquin Delta. San Francisco Estuary and Watershed Science 6(2). <http://escholarship.org/uc/item/7v92h6fs>. Accessed October 19, 2017.

Lewis, Levi, A. Barros, M. Wilmes et al. 2021. Interdisciplinary Studies on Longfin Smelt in the San Francisco Estuary. 2018-19 Annual Report for DWR Contract # 4600011196.

Nobriga, M. L., & Smith, W. E. (2020). Did a Shifting Ecological Baseline Mask the Predatory Effect of Striped Bass on Delta Smelt?. San Francisco Estuary and Watershed Science, 18(1).

The following references are added to Draft PEIR Section 5.11 Hydrology and Water Quality:

California Department of Water Resources and California State Coastal Conservancy (DWR and CSCC). 2014 (September). Dutch Slough Tidal Marsh Restoration. Final Supplemental Environmental Impact Report.

Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board). 2018 (July). Delta Nutrient Research Plan.

Metropolitan Water District of Southern California (Metropolitan). 2021 (June). 2020 Urban Water Management Plan.

Public Policy Institute of California (PPIC). 2017. Groundwater in California. [https://www.ppic.org/wp-content/uploads/JTF\\_GroundwaterJTF.pdf](https://www.ppic.org/wp-content/uploads/JTF_GroundwaterJTF.pdf).

Reclamation. 2016. North Valley Regional Recycled Water Program. Record of Decision (ROD-14-005). November 2016. [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=25647](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=25647). Accessed January 27, 2022.

1 Santa Clara Valley Water District (SCVWD). 2016. 2016 Groundwater  
2 Management Plan: Santa Clara and Llagas Subbasins. [https://s3.us-west-](https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Management%20Plan.pdf)  
3 [2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Man](https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Management%20Plan.pdf)  
4 [agement%20Plan.pdf](https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Management%20Plan.pdf). Accessed January 27, 2022.

5 State Water Resources Control Board (SWRCB). 2022. California water right  
6 Points of Diversion (PODs) contained in the California Water Resources  
7 Control Board eWRIMS database, in ESRI File Geodatabase format.  
8 Updated April 1, 2022. California water right Points of Diversion (PODs)  
9 contained in the California Water Resources Control Board eWRIMS  
10 database, in ESRI File Geodatabase format. Accessed April 19, 2022.

# Chapter 3

## Responses to Comments

This Chapter of the Final Program Environmental Impact Report (PEIR) contains written responses to all comments raising significant environmental issues received by the Delta Stewardship Council (Council) from agencies and the public on the Draft PEIR. Because multiple comments were received that address similar issues, the Final PEIR includes comprehensive “topical responses” addressing these issues (see Section 3.1). Each topical response provides background regarding the specific issue, how the issue was addressed in the Draft PEIR, and additional clarification and explanation as appropriate to address the comments. In addition, responses to individual comments raising environmental issues were prepared and are presented in Section 3.2. The responses to comments clarify and amplify text in the Draft PEIR, but do not change the findings or conclusions of the Draft EIR.

### 3.1 Topical Responses

After review and evaluation of the comments received on the Draft PEIR, it was determined that some comments by different commenters were substantially similar in subject matter. In response to these frequently raised comments, “topical responses” have been prepared to address such comments and to avoid repetition of responses and lengthy duplication of text.

Each topical response includes a summary of the similar comments received and responses to those general topics. The following summarizes the general topics addressed in each of the topical responses provided in this Final PEIR:

#### **Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment**

- ♦ Development of the Ecosystem Amendment
- ♦ Project Objectives
- ♦ Relationship to Delta Plan

#### **Topical Response 2: Approach to the Environmental Analysis**

- ♦ Program vs. Project Level Environmental Review
- ♦ Approach to Environmental Analysis
- ♦ Determination of Impact Significance

## Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment

This topical response addresses comments received pertaining to the development and purpose of the Proposed Project. Specifically, this topical response addresses the following topics:

- ◆ Development of the Ecosystem Amendment
- ◆ Development and content of Ecosystem Amendment objectives and core strategies
- ◆ Relationship to the Delta Plan

### ***TR1.1 Summary of Comments Received***

The following is a summary of comments received during the public comment period (September 27 to November 30, 2021) on the Draft PEIR. Some of the comments, which are summarized below, address the proposed language of the Ecosystem Amendment, the legal basis for the amendment (e.g., compliance with the Delta Reform Act), and the proposed Core Strategies and objectives. Other comments address the requirements of the California Environmental Quality Act (CEQA) and the analysis of the proposed Ecosystem Amendment (or Proposed Project) in the Draft PEIR.

The Council received comments from state and local agencies, tribes, non-profit and other organizations, and one individual. The Council also received verbal comments, which were recorded in a transcript, during a virtual public meeting on November 18, 2021. In total, the Council received 19 written comment letters and two verbal comments, some of which contained multiple comments on the Draft PEIR, Ecosystem Amendment, or related topics.

Several comments raised issues pertaining to or seeking clarification of the process of developing the Ecosystem Amendment. These included comments regarding consideration of previous comments submitted by commenters. Some commenters attached comments submitted to the Council on the Preliminary Public Review Draft of the proposed amendment released in November 2019 and asked for clarification of how these had been addressed. Commenters also asserted that some of these comments should have been addressed in the Draft PEIR.

Commenters also raised topics that were not part of the Proposed Project, such as thematic areas outside the scope of the Ecosystem Amendment. Comments also raised issues regarding how the Proposed Project would help further the coequal goals and an enhanced Delta ecosystem.

Other commenters raised issues related to development and content of the core strategies included in the Ecosystem Amendment. One commenter questioned the role of the Delta Stewardship Council and the objectives of the Ecosystem Amendment. Other commenters recommended general changes or considerations related to the core strategies. Other commenters suggested specific edits to the core strategies.

## TR1.2 Responses to Comments Received

Comments on the development and purpose of the proposed Ecosystem Amendment are responded to individually within Chapter 3, including cross references to this Topical Response 1 as appropriate. Comments on the Draft PEIR are bracketed and responded to individually in Final PEIR Section 3.2, *Responses to Comments on the Draft PEIR*.

Comments on the Draft PEIR related to topics other than environmental issues were noted. Although not required to respond to such comments (see CEQA Guidelines section 15088(a) and (c)), in most cases, additional context is provided in a response to comment. For example, comments offered on the Ecosystem Amendment rather than the Draft PEIR are noted and additional context or references to sections in the Draft PEIR are provided.

### TR1.2.1 Development of the Ecosystem Amendment

As described in Chapter 1, *Introduction*, page 1-1, the Council adopted the Delta Plan in 2013. Since 2013, the Delta Plan has been amended twice, in 2016 and 2018. These amendments are described in Chapter 2, *Delta Plan Background*, subsection 2.2.1. In 2016, the Council adopted refinements to the 2013 performance measures and amended Cal. Code Regs. title 23, section 5001(dd)(3) to exempt single-year water transfers from the regulatory definition of “Covered Action.” In 2018, the Council adopted three amendments to the Delta Plan, referred to as (1) Conveyance, Storage Systems, and the Operation of Both Amendment, (2) Performance Measures (PM) Amendment, and (3) the Delta Levees Investment and Risk Reduction Strategy (DLIS) Amendment. In March 2020, the Council adopted a resolution that, among other actions, rescinded the DLIS Amendment. Delta Plan Policy RR P1 has since been revised and is currently undergoing the rulemaking process.

As described in Chapter 2, *Delta Plan Background*, and Chapter 3, *Project Description*, the proposed Ecosystem Amendment is being undertaken to address the change in approach by the former Bay Delta Conservation Plan (BDCP) lead agencies which involved separating the ecosystem portion of the BDCP from the water conveyance portion (California WaterFix), and created a separate ecosystem restoration program (EcoRestore) to reflect new science, and provide a more comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta. EcoRestore is currently being implemented. This shift is described in Draft PEIR Chapter 2, subsection 2.2.9, *Bay Delta Conservation Plan and the Delta Plan*. The proposed Ecosystem Amendment is consistent with the Delta Reform Act requirement that the “Council shall review the Delta Plan at least once every five years and may revise it as the Council deems appropriate” (Wat. Code section 85300(c)).

In response to this shift in the BDCP approach, Council staff conducted listening sessions with a range of stakeholders, local agencies, Delta residents, Councilmembers, and Delta Independent Science Board (Delta ISB) members in 2017 and 2018. Council staff also conducted background research and developed three draft papers to synthesize ecosystem science relevant to Chapter 4 of the Delta Plan. These papers were made available for public review. Based in part on these listening sessions and Council research, Council staff developed a portfolio of potential revisions to Chapter 4. These

potential revisions were brought to the Council for discussion at the April 2019 and June 2019 Council meetings.

Based on Council input, staff prepared a Preliminary Public Review Draft of the proposed amendment in November 2019 and solicited comments from state and local agencies, the general public, and the Delta ISB. Comments were incorporated into the May 2020 Draft of the proposed amendment, which the Council authorized as the proposed project for environmental review under CEQA at its May 2020 meeting. As described in Draft PEIR Chapter 1, subsection 1.3, Environmental Review and Approval Process, the Council issued a Notice of Preparation (NOP) of a Draft PEIR in May 2020. The Council held a public scoping meeting during the 60-day NOP review period and solicited additional comments. The Council also sent a notice to seven tribes that requested notification of all Council activities, pursuant to Assembly Bill (AB) 52 (Pub. Resources Code section 21074). In addition, the Council sent non-AB 52 notification letters to an additional 120 contacts in May 2020.

A Draft PEIR was developed following the May 2020 NOP and Council's authorization of the May 2020 Draft as the proposed amendment. The Draft PEIR considered comments received by the Council. As described in Draft PEIR Chapter 1, subsection 1.3.3, *Draft PEIR*, the Draft PEIR was released for a 64-day public review period between September 27, 2021 and November 30, 2021. A workshop to receive public comments was held at the November 18, 2021 Council meeting. Comments received during the review period were considered as described above, under TR1.2.

#### **TR1.2.2 Project Objectives**

As described in Draft PEIR Chapter 3, *Project Description*, the objectives of the proposed Ecosystem Amendment are derived from the Delta Reform Act of 2009, and are to further achievement of the coequal goal to restore, protect, and enhance the Delta Ecosystem (Water Code [Wat. Code] section 85054) and eight "inherent" objectives in Wat. Code section 85020. These objectives are to be achieved in a manner that:

1. Furthers the statewide policy to reduce reliance on the Delta in meeting the state's future water supply needs through regional self-reliance (Wat. Code section 85021);
2. Is consistent with specific statutory content requirements for the Delta Plan (Wat. Code sections 85302(c) through 85302(e) and 85303–85308);
3. Is implementable in a comprehensive, concurrent and interrelated fashion; and
4. Is accomplished as rapidly as realistically possible without jeopardizing ultimate success.

These project objectives informed development of the Proposed Ecosystem Amendment, including development of the five core strategies (as described in Chapter 3) and identification of alternatives (as described in Draft PEIR Chapter 9, *Alternatives*).

### 1 TR1.2.3 Relationship to Delta Plan

2 As described in Draft PEIR Chapter 2, *Delta Plan Background*, the PEIR for the Delta  
3 Plan was certified in May 2013. The Delta Plan has been implemented since 2013, and  
4 was amended in 2016 and 2018, as described in subsection 2.2. The Proposed  
5 Ecosystem Amendment would revise Chapter 4 of the Delta Plan as described in Draft  
6 PEIR Chapter 3, *Project Description*. If adopted by the Council, Council staff would  
7 request that the Council authorize staff to initiate an Administrative Procedures Act  
8 rulemaking process for the new and revised regulations in the Proposed Ecosystem  
9 Amendment. Upon completion of rulemaking, the new and revised regulations would go  
10 into effect and become part of the latest version of the Delta Plan.

## 11 Topical Response 2: Approach to the Environmental Analysis

12 This topical response addresses comments received pertaining to the approach used in  
13 evaluating impacts of the Proposed Project. Specifically, this topical response  
14 addresses the following topics:

- 15 ♦ Program vs. Project Level Environmental Review
- 16 ♦ Approach to Environmental Analysis
- 17 ♦ Determination of Impact Significance

### 18 TR2.1 Summary of Comments Received

19 Some comments state that the Draft PEIR was inadequate because it did not evaluate  
20 impacts of projects that could be implemented in response to the proposed Ecosystem  
21 Amendment. Other comments questioned the support for significant and unavoidable  
22 impact findings. Comments were also received which state that the mitigation measures  
23 included in the Draft PEIR were overreaching in their intent to minimize identified impacts.

### 24 TR2.2 Response to Comments Received

#### 25 TR2.2.1 Program vs. Project Level Environmental Review

26 CEQA Guidelines Article 11 presents examples of the types of EIRs that can be  
27 prepared based on different situations and intended uses. As described in Chapter 1,  
28 *Introduction*, on page 1-1 of the Draft PEIR, the Council, as the CEQA lead agency,  
29 determined that an EIR was the appropriate type of CEQA document for the Proposed  
30 Project. As also described on page 1-1 and 1-2, this EIR is a Program EIR and has  
31 been prepared pursuant to and consistent with the requirements of section 15168 of the  
32 State CEQA Guidelines. As an informational document, the Draft PEIR provides full  
33 disclosure to the public and Council regarding the potential significant environmental  
34 effects of the proposed Ecosystem Amendment and is intended to provide sufficient  
35 information to foster informed decision-making by the Council.

36 CEQA Guidelines section 15168 explains that a PEIR is prepared for a series of actions  
37 that can be characterized as one large project and are related: (1) geographically; (2) as  
38 logical parts in a chain of contemplated actions; (3) in connection with issuance of rules,  
39 regulations, plans, or other general criteria to govern the conduct of a continuing  
40 program; or (4) as individual activities carried out under the same authorizing statutory  
41 or regulatory authority and having generally similar environmental effects that can be

mitigated in a similar way. Preparation of a PEIR allows the Council to consider policy alternatives and program-level environmental impacts and mitigation measures at an early stage, when the agency has greater flexibility to address program-wide issues and cumulative impacts (see page 1-3 of the Draft PEIR).

As described in Draft PEIR Section 5.1, *Approach to the Environmental Analysis*, on pages 5.1-1 and 5.1-2, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Rather, as required by the Delta Reform Act, the Delta Plan is a comprehensive plan designed to guide the actions and projects of other federal, state, and local agencies that are related to the Delta and the Suisun Marsh (Wat. Code section 85300(a)). The Proposed Project, like the current Delta Plan, implements this statutory mandate by including policies that contain specific parameters and requirements with which the “covered actions” (as defined in the Delta Reform Act) of state and local agencies must comply (after the completion of the rulemaking process), combined with recommendations to federal, State, and local agencies to take other actions to help achieve the coequal goals.

To ensure a conservative analysis of environmental impacts, the Draft PEIR assumes that the Delta Plan and the Proposed Project would be implemented and would achieve their desired outcomes, regardless of whether the outcomes are expressed as policies, recommendations, or performance measures. Accordingly, the Draft PEIR evaluates the potential impacts of types of projects that the Delta Plan, as a whole and as amended by the Proposed Project, would encourage and promote in the Primary and Extended Planning Areas (described in Draft PEIR Chapter 3, *Project Description*). Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time specific projects are proposed in response to the proposed Ecosystem Amendment.

#### **TR2.2.2 Approach to Environmental Analysis**

Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, describes the general types of activities, potential projects, and construction methods that could be undertaken by other entities<sup>1</sup> in response to the proposed Ecosystem Amendment. The Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Specific project details such as project size, configuration, location, and operation for potential projects that may be implemented by entities other than the Council are not known at this time. For this reason, the Draft PEIR assesses the potential effects of

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<sup>1</sup> As presented in Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, Section 5.1 (pages 5.1-2 and 5.1-3), the term “entity” is defined as a public agency or a nongovernmental organization or person that is engaged in carrying out, approving, or funding projects in response to the proposed Ecosystem Amendment and that meets either of the following criteria: (1) is a State or local agency that proposes to carry out, approve, or fund all or a portion of a project; (2) is a nongovernmental organization or person that carries out a project and would coordinate with a State or local agency with principal responsibility to approve, supervise, or fund that project, as described in CEQA Guidelines section 15051.



different types of projects and activities that could be undertaken by other entities in response to the proposed Ecosystem Amendment. Project-specific impacts would be addressed in future environmental analysis conducted by lead agencies at the time projects are proposed. The analysis in this Draft PEIR assumes that the projects or activities undertaken by other entities in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances.

Because there are multiple ways in which both individual projects and the integrated system as a whole could be operated to meet regulatory requirements and guidelines, the resource sections in Draft PEIR Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, evaluate a range of potential projects, construction methods, and potential effects that could result from implementation of these activities. A list of potential projects that represent examples of the types of projects that could result from implementation of the Proposed Project is presented in Section 5.1 on pages 5.1-6 and 5.1-7. The list is not intended to be exhaustive; rather, it illustrates the types of projects considered during development of the impact evaluation, in combination with the general types of activities and construction methods that could result from implementation of the Proposed Project.

As described in Chapter 3, *Project Description*, of the Draft PEIR, the analysis in the PEIR assumes that the proposed Ecosystem Amendment, as well as the rest of the Delta Plan as previously adopted, would be implemented and achieve their desired outcomes regardless of whether the outcomes are expressed as policies or recommendations. Accordingly, in Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, the Draft PEIR evaluates the potentially significant effects on the environment of the types of projects that the Ecosystem Amendment's proposed changes would encourage and promote in the Primary and Extended Planning Areas as part of the Delta Plan as a whole. The potential significant impacts associated with implementing the existing, unchanged Delta Plan policies, recommendations and performance measures were evaluated at a program level in the 2013 Delta Plan PEIR and the 2018 Delta Plan Amendments PEIR, as certified by the Council in 2013 and 2018, respectively.

### **TR2.2.3 Determination of Impact Significance**

As described in the Method of Analysis subsection in each resource section in Chapter 5, (and as described in TR2.2.2), the analysis of impacts is based on an evaluation of the potential changes to each resource topic that would result from implementation of actions by other entities in response to the Proposed Project. Because the precise locations and characteristics of potential future activities and projects are unknown, the analysis is programmatic (as described in TR2.2.1), focusing on the types of reasonably foreseeable changes to the physical environment due to implementation of types of projects and actions that might be taken in the future. Impacts due to implementation of the Proposed Project are evaluated to the extent feasible in terms of how physical and operational project components might cause significant adverse environmental impacts, using a level of detail appropriate to facilitate meaningful review and informed public decision making.

As described in Section 5.1 on page 5.1-8 and in each resource section in Chapter 5, mitigation measures were adopted and incorporated into the Delta Plan in order to reduce or avoid the significant environmental impacts of the Delta Plan. These mitigation measures were previously adopted and incorporated into the Delta Plan, as amended April 26, 2018 (Delta Plan Mitigation Measures). Delta Plan Mitigation Measures have been revised in each resource section in Chapter 5 (revised mitigation measures) to reflect updated formatting and current standards. It is within the Council's authority to adopt and modify mitigation measures that were previously adopted and incorporated into the Delta Plan. The revised mitigation measures are equally effective and would not result in any new or substantially more severe significant impacts than the previously adopted Delta Plan Mitigation Measures. The revised Delta Plan Mitigation Measures text is shown in Appendix B of the Draft PEIR, *Revised Delta Plan Mitigation Measures*.

The revised mitigation measures would continue to be implemented as part of the Proposed Project and would apply to covered actions as required by Delta Plan policy G P1(b)(2) (California Code of Regulation [Cal. Code Regs.] title 23, section 5002(b)(2)), after completion of rulemaking. In many cases, revised mitigation measures, or equally effective feasible measures adopted as part of covered actions, would reduce impacts identified in this PEIR to a less-than-significant level. However, the specific locations, scale, and timing of possible future facilities and actions are not known at this time, and the specific resources present within the project footprint of construction sites and new facilities in the Primary Planning and Extended Planning Areas cannot be determined. Factors necessary to identify specific impacts include the design and footprint of a project, and the type and precise location of construction activities. Therefore, in many cases it is not possible to conclude that significant adverse effects would be avoided or reduced to a less-than-significant level. Furthermore, implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council. Therefore, identified significant impacts would remain significant and unavoidable.

For non-covered actions that are constructed and operated in response to the proposed Ecosystem Amendment in the Primary and Extended Planning Areas, implementation of revised mitigation measures is recommended to reduce potentially significant impacts. However, the implementation and enforcement of mitigation measures for projects that are not covered actions is not within the authority of the Council. Accordingly, for non-covered actions, this PEIR assumes that potentially significant environmental impacts would be significant and unavoidable, even if feasible mitigation measures are available, because implementation would be within the responsibility and jurisdiction of an agency other than the Council, as CEQA requires.

## 3.2 Responses to Comments on the Draft PEIR

This section contains the comment letters (including emails) received on the Draft PEIR, transcribed oral comments received during the public workshop held on November 18, 2021, and the Council's responses to environmental issues raised in those comments. Each letter and transcript, as well as each individual comment within the letter or

transcript, has been given a number for purposes of cross-referencing. Attachments and Exhibits submitted with comment letters are noted at the end of the letter and the complete text of the attachments and exhibits is presented in Appendix B of this Final PEIR. Text changes made in response to a comment are indicated by ~~strikeout~~ where text is removed and by double underline where text is added. These changes amplify, clarify, or make modifications or corrections but do not change the results or conclusions of the Draft PEIR.

Table 3-1 lists all of the parties who submitted comments on the Draft PEIR during the public review period. The commenting parties are organized into seven categories, each with an abbreviated letter prefix that assists the reader in identifying specific letters: Tribes (T), State of California agencies (ST), local agencies (LO), organizations (OR), individuals (I), and comments received during the November 18, 2021 public workshop (PMT). Within each category, the comment letter number is also noted.

**Table 3-1**  
**Comments on Draft Program Environmental Impact Report**

Letter #	Commenter
<b>Tribes (T)</b>	
T1	Auburn Rancheria
<b>State of California Agencies (ST)</b>	
ST1	California Department of Transportation
ST2	California Department of Water Resources
ST3	California State Lands Commission
ST4	Delta Protection Commission
ST5	Central Valley Flood Protection Board
<b>Local Agencies (LO)</b>	
LO1	Central Delta Water Agency
LO2	Delta Counties Coalition (Contra Costa, Sacramento, San Joaquin, Solano, Yolo)
LO3	East Bay Municipal Utilities District
LO4	Local Agencies of the North Delta
LO5	Lower Sacramento River/Delta North Regional Flood Management Agencies (Solano, Yolo, SAFCA, WSAFCA, RD 2068, Knights Landing Ridge Drainage District, RD 1600)
LO6	Regional San
LO7	Solano County Water Agency
LO8	Reclamation District 1002
<b>Organizations (OR)</b>	
OR1	Conservation Groups (Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, North Coast Rivers Alliance)
OR2	Restore the Delta
OR3	State Water Contractors
<b>Individuals (I)</b>	
I1	Coats, Francis
I2	Meserve, Osha
<b>Public Meeting Transcript (PMT)</b>	

### 1 **3.2.1 Comments from Tribes**

- 2 This section contains a copy of the comment letters received from Tribes (see  
3 Table 3-2), and responses.

**Table 3-2**

**Tribes Providing Comments on Draft Program Environmental Impact Report**

Letter #	Tribe
T1	Auburn Rancheria

November 29, 2021

Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

Re: Draft PEIR for the Chapter 4 Delta Plan Ecosystem Amendment published September 2021 (State Clearinghouse #20205021g).

Dear Assistant Planning Director Harriet Ross,

Please find our comments for the Draft PEIR for the Chapter 4 Delta Plan Ecosystem Amendment published September 2021 (State Clearinghouse #20205021g). The Draft PEIR states that no tribes responded to the request for consultation. Our records show no record of a request to consult under Public Resources Code Section 21080.3. In the absence of consultation, and in good faith, we recommend the following revisions and additions to sections 5.7 (Cultural Resources) and 5.17 (Tribal Cultural Resources) in the Draft PEIR.

Our primary concern is that the Tribal Cultural Resource Section (5.17) refers to the mitigation measures in the Cultural Resources (5.7), yet the Cultural Resources sections do not adequately address tribal consultation to identify, evaluate, or treat tribal cultural resources. Incorporating the following recommendations will better protect tribal cultural resources and tribal consultation for future projects under this PEIR.

Regarding the changes in “Appendix C-Text of Proposed Delta Plan Ecosystem Amendment”, we appreciate recognition of many California tribal communities’ continued connection to the natural resources in the Sacramento and San Joaquin Delta (p. 4-17). “Appendix 3A. Disclosing Contributions to Restoring Ecosystem Function and Providing Social Benefits (23 CCR [TBD])” (p. 3A-19) and the statement under Cultural Benefits (p. Q2-15) are strong statements that acknowledge and include cultural benefits as ecocultural and environmental justice to project assessments. I would note that restoration and stewardship of native species and landscapes, with the engagement of tribal communities, restores cultural benefits and disparities in environmental justice.

Please do not hesitate to reach out to the United Auburn Indian Community’s (UAIC’s) Tribal Historic Preservation Department for any questions or clarifications.

Respectfully,

Cherilyn Ashmead

T1-1

T1-2

T1-3

United Auburn Indian Community (UAIC) Recommendations for the  
Draft PEIR for the Chapter 4 Delta Plan Ecosystem Amendment  
published September 2021 (State Clearinghouse #20205021g)

**Revise 10-1(a):**

10-1(a) Before any ground-disturbing activities begin, conduct intensive archaeological surveys, including subsurface investigations, to identify the locations, extent, and integrity of presently undocumented archaeological, tribal cultural, and landscape resources that may be located in areas of potential disturbance. Conduct tribal consultation to identify and evaluate the presence and significance of tribal cultural resources and landscapes. Surveys and subsurface investigations where tribes have identified tribal cultural resources shall include tribal monitors in addition to archaeologists. In addition, if ground-disturbing activities are planned for an area where a previously documented prehistoric archaeological site has been recorded but no longer may be visible on the ground surface, conduct test excavations to determine whether intact archaeological subsurface deposits are present. Also conduct surveys at the project site for the possible presence of cultural landscapes and traditional cultural properties.

T1-4

**Revision and Addition 10-1(c):**

Section 10-1(c) has inappropriate language for identification, evaluation, and treatment of tribal cultural resources. TCRs shall be protected, in consultation with tribal representatives, whether they are eligible for CRHR or not. This is a section where TCRs should be addressed separately in Section 5.17

10-1(c) If CRHR-eligible archaeological resources, tribal cultural resources, or cultural landscapes/properties are present and would be physically impacted, specific strategies to avoid or protect these resources should be implemented if feasible. These measures may include:

- I. Planning construction to avoid the sensitive site
- II. Deeding the sensitive sites into permanent conservation easements
- III. Capping or covering archaeological sites
- IV. Planning parks, green space, or other open space to incorporate the sensitive sites

**Commented [CA1]:** This is in appropriate language for tribal cultural resources. TCRs shall be protected, in consultation with tribal representatives, whether or not the are eligible for CRHR. This is a section where TCRs should be addressed separately in section 5.17

T1-5

**Recommendation to resolve concern:**

Add TCR specific mitigation measures to section 5.17 (Tribal Cultural Resources):

If tribal cultural resources, or cultural landscapes/properties are present and would be impacted, specific strategies to avoid or protect these resources should be implemented if feasible. These measures may include:

- I. Planning construction to avoid the sensitive site
- II. Deeding the sensitive sites into permanent conservation easements
- III. Capping or covering archaeological sites

IV. Planning parks, green space, or other open space to incorporate the sensitive sites

↑ T1-5  
cont.

**Revision 10-1(d)**

10-1(d) If federal agencies are participants in the project and Section 106 of the National Historic Preservation Act applies, conduct formal consultation with the State Historic Preservation Officer and ~~the Native American community~~ California Native American tribes. Potential adverse effects on cultural resources recommended as eligible for listing in the NRHP will be resolved through the development of a memorandum of agreement and/or a program-level agreement.

T1-6

**Revision 10-1(e)**

10-1(e) As part of efforts to identify, evaluate, and consider cultural resources, including prehistoric sites, Native American human remains, and traditional cultural properties, California Native American tribes shall be consulted. The California Native American Heritage Commission (NAHC) shall be asked to provide a list of contacts for Native American tribes who should be contacted concerning an identified future project. The NAHC shall also be asked to search its Sacred Lands Files. ~~Native Americans~~ California Native American tribes identified by the NAHC ~~would-shall~~ be contacted by letter to ~~request information consult on the identification, evaluation, and treatment of on tribal cultural resources of importance. They also shall be asked to identify concerns they have about the project. THPOs [Tribal Historic Preservation Officers] and Tribal Administrators of federally recognized tribes shall be contacted and asked to search their files and provide information necessary for the identification and consideration of cultural resources.~~

T1-7

**Revision 10-2 (a)**

10-2(a) In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, the contractor shall immediately halt ~~potentially damaging excavation~~ all ground disturbing activity within 100 ft in the area of the burial and notify the county coroner ~~and a professional archaeologist to determine~~ the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or State lands (Health & Saf. Code section 7050.5(b)). If the coroner determines that the remains are those of a Native American, the coroner must contact the NAHC by telephone within 24 hours of making that determination (Health & Saf. Code section 7050(c)). Native American human remains are potentially considered Tribal Cultural Resources, and in the event of their discovery, Mitigation Measure 10-1(b) through (e) shall apply as appropriate.

T1-8

**Add to Section 5.7 and/or Section 5.17:**

**10-#(#)** Unanticipated Discovery Protocol for Native American or Historic-era Archaeological Resources. If Native American or historic-era archaeological resources are encountered during project construction or operation, all activity within 100 feet of the find shall cease and the find shall be flagged for avoidance. A qualified archaeologist,

T1-9  
↓

defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, shall be immediately informed of the discovery. The qualified archaeologist shall inspect the discovery. Native American archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (midden) containing heat-affected rocks, artifacts, or shellfish remains; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include building or structure footings and walls, and deposits of metal, glass, and/or ceramic refuse. If the qualified archaeologist determines that the resource is or is potentially Native American in origin, culturally affiliated California Native American Tribes shall be contacted to assess the find and determine whether it is potentially a tribal cultural resource.

↑  
T1-9  
cont.



## **T1 Auburn Rancheria**

### **Responses to Comments from TR1 Auburn Rancheria**

#### **T1-1:**

The Council complied with the requirements of Public (Pub.) Resources Code section 21080.3.1(b) (established as part of state AB 52). The process was fully described in Chapter 1, *Introduction*, in subsection 1.3.2 Notification of California Native American Tribes on Draft EIR pages 1-5 through 1-6. As described on page 1-6, on May 15, 2020, the Council sent a notice to the seven tribes that requested notification of all Council activities, pursuant to AB 52 (Pub. Resources Code section 21080.3.1(d)). The Auburn Rancheria was not one of these seven tribes. As further described on page 1-6, in addition to the AB 52 notices, the Council also requested a list of California Native American tribes within the Planning Area from the Native American Heritage Commission (NAHC) in an effort to provide non-AB 52 notification of the proposed Ecosystem Amendment in the event that tribes would like to provide comments on the project. The Auburn Rancheria was one of the tribes listed by the NAHC as being within the Planning Area. As one of the non-AB 52 tribes, the Auburn Rancheria received an email notification on May 15, 2020. Additionally, a letter was uploaded to the Auburn Rancheria's web portal indicating the availability of the Draft PEIR on September 28, 2021.

See responses to T1-2 through T1-10 which include the responses to the commentor's requested revisions that apply to Section 5.7 *Cultural Resources* and Section 5.17 *Tribal Cultural Resources*.

#### **T1-2:**

See responses to T1-3 through T1-9.

#### **T1-3:**

Staff is proposing additions and revisions to several sections of the proposed Ecosystem Amendment to reflect tribal knowledge and acknowledge tribal connections to the Delta, including: additions to the narrative, Appendix Q2 (Appendix A, Final PEIR), mitigation measure narrative and a new mitigation measure, and language under Core Strategy 2 and Core Strategy 5. These proposed additions and revisions will be presented to the Council for consideration prior to adoption. See responses to T1-4 through T1-9.

#### **T1-4:**

Revised Mitigation Measure 10-1(a) is revised and renumbered as follows:

10-1(a~~c~~) Before any ground-disturbing activities begin, conduct intensive archaeological surveys, ~~including~~ and subsurface investigations if warranted, to identify the locations, extent, and integrity of presently undocumented archaeological, tribal cultural, and landscape resources that may be located in areas of potential disturbance. Conduct tribal consultation to identify and evaluate the presence and significance of tribal cultural resources and landscapes. Surveys and subsurface investigations where tribes have

identified tribal cultural resources shall include tribal monitors in addition to archaeologists. In addition, if ground-disturbing activities are planned for an area where a previously documented prehistoric archaeological site has been recorded but no longer may be visible on the ground surface, conduct test excavations to determine whether intact archaeological subsurface deposits are present. Also conduct surveys at the project site for the possible presence of cultural landscapes and traditional cultural properties.

**T1-5:**

Section 5.17, *Tribal Cultural Resources*, is a separate resource section in the Draft PEIR. The impact analysis in Section 5.17 addresses impacts to tribal cultural resources based on the thresholds of significance included in Appendix G of the CEQA Guidelines (see page 5.17-6). The analysis includes revised mitigation measures to minimize impacts to tribal cultural resources that could result from projects implemented by other entities in response to the proposed Ecosystem Amendment. As described on page 5.17-9, Revised Mitigation Measures 10-1(a) through (g) and 10-2(a) through (f), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P1(b)(2). The full text of the revised mitigation measures is included in Section 5-7, *Cultural Resources*, under Impact 5.7-2 (Mitigation Measures 10-1(a) through (g)) and Impact 5.7-3 (Mitigation Measures 10-2(a) through (f)). Because there is a separate tribal resources section and analysis and the mitigation measures address the identified impacts, no revision to the Draft PEIR will be made.

**T1-6:**

Revised Mitigation Measure 10-1(d) is revised and renumbered as follows:

10-1(df) If federal agencies are participants in the project and Section 106 of the National Historic Preservation Act applies, conduct formal consultation with the State Historic Preservation Officer and ~~the Native American community~~ California Native American tribes. Potential adverse effects on cultural resources recommended as eligible for listing in the NRHP will be resolved through the development of a memorandum of agreement and/or a program-level agreement.

**T1-7:**

Revised Mitigation Measure 10-1(e) is revised and renumbered as follows:

10-1(eg) As part of efforts to identify, evaluate, and consider cultural resources, including prehistoric sites, Native American human remains, and traditional cultural properties, California Native American tribes shall be consulted. The California Native American Heritage Commission (NAHC) shall be asked to provide a list of contacts for Native American tribes who should be contacted concerning an identified future project. The NAHC shall also be asked to search its Sacred Lands Files. California Native Americans ~~tribes~~ tribes identified by the NAHC ~~would~~ shall be contacted by letter to consult on the identification, evaluation, and treatment of tribal ~~request information on~~

~~cultural resources of importance. They also shall be asked to identify concerns they have about the project. THPOs [Tribal Historic Preservation Officers] and Tribal Administrators of federally recognized tribes shall be contacted and asked to search their files and provide information necessary for the identification and consideration of cultural resources.~~

**T1-8:**

Revised Mitigation Measure 10-2(a) is revised as follows:

10-2(a) In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, the contractor shall immediately halt ~~potentially damaging excavation~~ all ground disturbing activities within 100 feet in the area of the burial and notify the county coroner ~~and a professional archaeologist~~ to determine the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or State lands (Health & Saf. Code section 7050.5[b]). If the coroner determines that the remains are those of a Native American, the coroner must contact the NAHC by telephone within 24 hours of making that determination (Health & Saf. Code section 7050[c]). Native American human remains are potentially considered Tribal Cultural Resources, and in the event of their discovery, Mitigation Measure 10-1(b) through (e) shall apply as appropriate.

**T1-9:**

Revised Mitigation Measure 10-1(g) is revised and renumbered as follows:

10-1(gi) If potentially CRHR-eligible Native American or historic-era archaeological resources, including submerged or buried shipwrecks or other maritime-related cultural resources, are discovered during construction activities, work shall halt within 100 feet of the discovery until the find can be evaluated by a qualified archaeologist or maritime archaeologist as appropriate. A qualified archaeologist, which is defined as a person meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, shall be immediately informed of the discovery. In addition, SLC shall be consulted. The qualified archaeologist shall inspect the discovery. If the qualified archeologist determines that the resource is or is potentially Native American in origin, culturally affiliated California Native American Tribes shall be contracted to assess the find and determine whether it is potentially a tribal cultural resource.

## 1 **3.2.2 Comments from State Agencies**

2 This section contains a copy of the comment letters received from State agencies (see  
3 Table 3-3), and responses.

**Table 3-3**  
**State Agencies Providing Comments on Draft Program Environmental Impact Report**

<b>Letter #</b>	<b>State Agency</b>
ST1	California Department of Transportation
ST2	California Department of Water Resources
ST3	California State Lands Commission
ST4	Delta Protection Commission
ST5	Central Valley Flood Protection Board

## California Department of Transportation

DIVISION OF TRANSPORTATION PLANNING  
P.O. BOX 942873, | SACRAMENTO, CA 94273-0001  
(916) 653-0913  
[www.dot.ca.gov](http://www.dot.ca.gov)



November 30, 2021

RE: Delta Plan Ecosystem Amendment  
Draft Program Environmental Impact  
Report  
SCH: 2020050219

Ms. Harriet Ross  
Assistant Planning Director  
Delta Stewardship Council  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento, CA 95814

Dear Ms. Harriet Ross:

Thank you for the opportunity to review the Delta Stewardship Council's (Council) Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report (DEIR) regarding the Sacramento–San Joaquin Delta and Suisun Marsh (Delta).

The Council adopted the Delta Plan in 2013 as required by the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act). The Delta Reform Act requires the Council to review the Delta Plan at least once every five years and revise as deemed appropriate (Wat. Code section 85300(c)). The purpose of the proposed amendment to Chapter 4, Protect, Restore, and Enhance the Delta Ecosystem, of the Delta Plan is to address a fundamental shift in how conservation is being planned and implemented in the Delta. The proposed project consists of new and revised Delta Plan policies, recommendations, and performance measures in Chapter 4 of the Delta Plan related to ecosystem restoration in the Delta (Water Code [Wat. Code] section 85058). In addition, the proposed project includes the removal of some existing recommendations and performance measures.

### Specific Comments

1. Page 4-8, Table 4-2, "Subsidence Reversal Activities" – Under resulting infrastructure (natural), the table states native vegetation. If rice is utilized as indicated under the description, would the resulting infrastructure still be native?
2. Page 4-9, Table 4-2, "Activities" – We want to ensure that it makes sense for this table that one activity can lead to another? E.g., "fish passage improvements" could lead to "changes in flow."
3. Section 4.3.1 – Should utility relocation be included as a construction action as this may be a standard component?
4. If any habitat restoration occurs within Caltrans Right-of-Way (R/W), a Cooperative Maintenance Agreement or Interagency Agreement would be needed to maintain the habitat restoration during plant establishment. Caltrans District maintenance staff does not have specialized training to maintain habitat restoration sites.
5. A before-and-after pavement assessment should be completed. The needed repairs to negate the impacts should be the responsibility of the project, not Caltrans.

ST1-1

ST1-2

ST1-3

ST1-4

ST1-5

"Provide a safe and reliable transportation network that serves all people and respects the environment"

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Page 2

6. Be aware of the negative impact on existing highways, bridges, and levee systems caused by any proposed changes in water flow.
7. Be advised of construction impacts on traffic operations on the state highway system, including increased water traffic, which will increase the number of draw bridge openings and have severe adverse effects on the traveling public in the Delta communities.

ST1-6

ST1-7

## **General Comments**

### **Structures and Maintenance**

Please send Caltrans Structures, plans, modifications, calculations, etc., when an existing bridge is modified, or work is performed near an existing bridge. The Caltrans Structures contact is Kevin Flora, and his contact information is (916) 227-8036 or [kevin.flora@dot.ca.gov](mailto:kevin.flora@dot.ca.gov).

For any planned bridge or tunnel that passes over or under a public road:

- The Council must apply for a bridge name and number from Caltrans.
- Design bridges and tunnels using Caltrans adopted and latest modified American Association of State Highway and Transportation Officials (AASHTO) codes to prevent load capacity restrictions.
- To ensure quality control during construction, please reference Caltrans bridge standard specifications at the following weblink:  
<https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications>
- Please indicate and print procedures on the plans to submit approved pre-construction and as-built plans to Caltrans Headquarters Structures Maintenance.
- Caltrans requests to review bridge plans to ensure these plans comply with Caltrans standard practice, the scope of service, and alignment and geometrics. Please contact the Caltrans Local Development Review Branch for assistance and to set up a review.

ST1-8

Please find more information at the following weblinks:

<https://dot.ca.gov/programs/engineering-services/manuals/bridge-constr-records-proc-manual-vol1> and <https://dot.ca.gov/programs/engineering-services/manuals/bridge-constr-records-proc-manual-vol2>

- The Council can obtain existing bridge plans from Caltrans Headquarters Structures Maintenance and Investigations. Please contact Kevin Flora at (916) 227-8036 or [Kevin.flora@dot.ca.gov](mailto:Kevin.flora@dot.ca.gov)

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## Transportation Management Plan

A Transportation Management Plan (TMP) should be prepared with Caltrans input to outline the process of minimizing project-related traffic impacts and delays associated with various activities and are not limited to the following: logistics related to staging and storage of construction equipment workers and materials, prescriptive vegetation control and prescribed burns adjacent to proposed State Highway System (SHS) areas throughout the State. The Plan would provide a framework for the implementation of traffic control strategies and the timely distribution of traffic-related information to emergency services and the local citizens and businesses through the life of the plan.

The TMP is an approach for alleviating or minimizing work-related traffic delays by the effective application of traditional traffic handling practices that may include an innovative combination of various strategies. These strategies include public awareness campaigns, motorist information incident management, construction methods, demand management, and alternate route planning. Depending on the complexity of the work or magnitude of anticipated traffic impacts, a TMP may provide lane requirement charts, Standard Special Provisions (SSPs) for maintaining traffic. The schedule and staging of logistics for workers, equipment, materials, and activities are required to communicate effectively, plan, and execute coordination and implementation efforts in work zone areas.

For more information on Caltrans Transportation Management Plan Guidelines refer to this weblink: <https://dot.ca.gov/programs/traffic-operations/tmp>

ST1-9

## Encroachment Permits

- Any staging or work in Caltrans' R/W will require an encroachment permit.
- Any work in Caltrans' R/W, including temporary shoulder or lane closure, requires a Caltrans encroachment permit. Any temporary construction access will be needed to be removed upon completion. Also, as department policy, the installation of permanent signs is not permitted within Caltrans' R/W.
- Caltrans requests the Council to engage with Caltrans District Traffic Operations and Permits staff regarding any impacts to the SHS and its travelers, encroachment permits, traffic control measures, or other mitigation measures. For more information concerning encroachment permits, please use the following weblink:  
<https://dot.ca.gov/programs/traffic-operations/ep/ep-manual>

ST1-10

To apply for an encroachment permit, please complete and submit an encroachment permit application, environmental documentation, and five sets of plans to the appropriate Caltrans Districts. Current submittal procedures and district contacts are at the following weblink:  
<https://dot.ca.gov/programs/traffic-operations/ep/district-contacts>

## Hydrologic and Hydraulic Impact Study

Please prepare a Hydrologic and Hydraulic Impact Study to ensure the Plan's impact on the SHS are properly assessed. Caltrans requests that the Council coordinate with Caltrans on this

ST1-11

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Page 4

Plan and its various projects.

Please include the following in the study:

- Impacts on existing floods, floodways, and floodplains near the SHS
- Impacts on existing flood control structures: levees, pump stations, detention, and retention basins
- Change in groundwater table within SHS infrastructure
- Change in runoffs discharging to drainage systems near SHS
- Alteration of drainage systems crossing state R/W

Please contact the following District contacts for the appropriate county the potential project/work will take place in:

- Solano County (Caltrans District 4): Robin Amatya, (510) 410-040 or [robin.amatya@dot.ca.gov](mailto:robin.amatya@dot.ca.gov)
- Contra Costa County (Caltrans District 4): Khai Leong, (510) 407-2610 or [Khai.Leong@dot.ca.gov](mailto:Khai.Leong@dot.ca.gov)
- San Joaquin County (Caltrans District 10): Venkata Sudeepa Etikela, (209) 687-2529 or [VenkataSudeepa.Etikela@dot.ca.gov](mailto:VenkataSudeepa.Etikela@dot.ca.gov)
- Sacramento and Yolo Counties (Caltrans District 3): Jason McOmber, (530) 821-3944 or [Jason.mcomber@dot.ca.gov](mailto:Jason.mcomber@dot.ca.gov)

Please continue to keep Caltrans informed of this project and any future developments that could potentially impact state transportation facilities. If you have any further questions or require additional information, do not hesitate to contact Steve Kent at 916-594-6398 or [Stephen.kent@dot.ca.gov](mailto:Stephen.kent@dot.ca.gov)

Sincerely,

*Christopher A Nicholas*

CHRISTOPHER NICHOLAS,  
Acting Branch Chief-Local Development Review  
Headquarters

CC: Scott Morgan, Chief Deputy Director, State Clearinghouse Director, State Clearinghouse  
Caltrans District 3 Transportation Planning  
Caltrans District 4 Transportation Planning  
Caltrans District 10 Transportation Planning  
Caltrans Division of Landscape Architecture  
Caltrans Division of Maintenance  
Caltrans Division of Environmental Analysis



ST1-11  
cont.



ST1-12



**ST1 California Department of Transportation****Responses to Comments from ST1 California Department of Transportation****ST1-1:**

As described on page 4-18 of the Draft PEIR, Subsidence reversal approaches include agricultural subsidence reversal programs which could include the cultivation of rice. The rice plantings would be allowed to decompose, which would provide biomass to raise the ground elevation. For clarification, this would be considered natural (not native) infrastructure. As also described in Table 4-2 on page 4-8 of the Draft PEIR, artificial infrastructure could be constructed and operated in support of the establishment of rice ponds including: (1) new levees within an island to establish nontidal tule ponds to allow cultivation of rice; and (2) new surface water intakes/diversions to provide water to the nontidal tule pond or rice (see page 4-18) and could also include native vegetation. Therefore, subsidence reversal activities in response to implementation of the Ecosystem Amendment could be both natural and constructed infrastructure.

**ST1-2:**

The comment questions whether it makes sense that one activity presented in Table 4-2 on page 4-8 of the Draft PEIR could lead to another. The purpose of the information presented in Table 4-2 is to provide a summary of the general types of activities, construction activities, resulting constructed infrastructure, and operations and maintenance activities, that could be undertaken by entities other than the Council in response to the new and revised policies, recommendations, and performance measures included in the proposed Ecosystem Amendment. These activities are described in more detail in subsections 4.2.1 through 4.2.6 (pages 4-11 through 4-22 of the Draft PEIR). It is not assumed that one activity would lead to another. All are separate activities that could result in the same or similar impact mechanisms as noted in Table 4-2.

As described on page 4-19 (summarized here), fish passage improvement projects anticipated to be implemented in response to the Proposed Project could include activities such as installation of fish screens, installation of fish ladders, removal and/or modification of stream crossings, and/or the removal or modification of small dams. It is not assumed that these activities could lead to a change in flow. Activities that could result in flow changes include actions related to restoration projects, which could directly or indirectly affect the flow of water in the Delta (see page 4-11 of the Draft PEIR for more information).

**ST1-3:**

As described in subsection 4.3-1 Construction under Site Preparation on page 4-26 of the Draft PEIR, "Structures to be cleared may consist of residences, boat docks and ramps, agricultural outbuildings, irrigation facilities (distribution boxes, wells, standpipes, and pipes), power poles, utility lines, and piping." Therefore, utility relocation is assumed to be a construction activity that could take place during implementation of the Proposed Project. In addition, impacts associated with potential relocation of restoration projects is

evaluated in Section 5.18, *Utilities and Public Services*, in Impact 5.18-1 on pages 5.18-23 through 5.18-27.

**ST1-4:**

As presented in Section 5.16, *Transportation* on page 5.16-30, Revised Mitigation Measure 19-1(e) requires coordination with Caltrans and/or other local agencies with jurisdiction over transportation to minimize impacts on transportation infrastructure.

Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

**ST1-5:**

As presented in Section 5.16, *Transportation* on page 5.16-31, Revised Mitigation Measure 19-1(g) requires an assessment of existing road conditions and provisions for repair and maintenance if the roadway conditions are substantially degraded due to increased use. The documentation is to be submitted to the agency that has responsibility for maintaining the road. If substantial damage occurs, repairs shall be implemented to restore the roads to their previous conditions. See also response ST1-4.

**ST1-6:**

Impacts to existing transportation infrastructure associated with construction, and operation and maintenance activities for projects undertaken by other entities in response to the proposed Ecosystem Amendment, are evaluated in Section 5.16, *Transportation*. Revised Mitigation Measure 19-1(f) requires that a vehicle traffic detour plan be prepared and implemented before roadway inundation, and that the condition of the detour road surface shall be assessed and documented before flood flows are released that would overtop roads.

As explained in response ST1-5, Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such facilities are proposed. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**ST1-7:**

Implementation of projects by other entities in response to the proposed Ecosystem Amendment are related to restoration activities and would not be anticipated to increase water traffic that could result in increasing the number of draw bridge openings over existing conditions.

As explained in response ST1-5, Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such facilities are proposed. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**ST1-8:**

As discussed in Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Once specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, these entities would coordinate with Caltrans, as appropriate. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**ST1-9:**

See response ST1-8.

**ST1-10:**

See response ST1-8.

**ST1-11:**

See response ST1-8.

**ST1-12:**

Once proposals for specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, these entities would coordinate with Caltrans, as appropriate. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

**DEPARTMENT OF WATER RESOURCES**

715 P STREET, P.O. BOX 942836  
 SACRAMENTO, CA 94236-0001  
 (916) 653-5791



November 30, 2021

Ms. Jessica Pearson  
 Executive Officer  
 Delta Stewardship Council  
 715 P Street, 15-300  
 Sacramento, California 95814

**RE: Draft Program Environmental Impact Report (PEIR) for the proposed amendments to Delta Plan Chapter 4: Protect, Restore and Enhance the Delta Ecosystem**

Dear Ms. Pearson:

The Department of Water Resources (DWR) appreciates the opportunity to comment on the Draft Program Environmental Impact Report (PEIR) for the proposed amendments to Delta Plan Chapter 4. DWR also appreciates the Delta Stewardship Council's (Council) ongoing efforts to advance the state's coequal goals for the Delta. Given the potential impacts of the Chapter 4 amendments on numerous efforts, DWR reiterates its interest in clarification regarding how existing projects will be impacted by the proposed amendments, and what the Council's policy will be regarding the effective date of the amendments in relation to existing efforts. As DWR has previously stated, many projects in the Delta have multi-year, sometimes multi-decadal, planning, permitting, and implementation phases. DWR urges the Council to adopt an effective date for implementing the Chapter 4 amendments that takes into consideration the extensive time and resources already expended, particularly for projects that are nearing the end of the California Environmental Quality Act (CEQA) review process.

ST2-1

The following comments on the PEIR are also provided for your consideration:

Overarching Comments Regarding Mitigation Measures:

DWR sees value in adopting and incorporating mitigation measures that reduce or avoid significant environmental impacts in the Delta Plan. However, it is unclear how the revisions to the mitigation measures were considered. The impact analysis focuses on the ecosystem amendment and then includes the revised mitigation measures; however, the changes in the mitigation measures are not linked to any impacts of the proposed amendment. The utility of the mitigation measures is then discussed in a vague relationship to the overall Delta Plan. Given that these measures are imposed upon covered actions through Delta Plan Policy GP 1, DWR recommends that the PEIR takes into consideration the impacts associated with the revisions to these mitigation measures as a potential policy change. DWR also notes that, since the Delta Plan is programmatic, all potentially significant impacts are considered Significant and Unavoidable, and as such, there is limited assessment of the effectiveness of the adopted mitigation measures. DWR has concerns that further revisions could be made without triggering any changes to the significance determinations or without completing any substantial analysis. It is also unclear from the PEIR whether the mitigation measures could result in any impacts that would need to be mitigated and how these measures might impact other resources. DWR requests that the Council consider adding supporting documentation regarding the need for the individual changes and include in the impact analysis what those revisions to mitigation measures might mean as a policy change to covered actions.

ST2-2

ST2-3

Additionally, some of the mitigation measures go beyond CEQA considerations and identified CEQA thresholds and read more akin to policies than traditional mitigation. For example, the newly inserted measure 7-1(b) for agricultural impacts mirrors language used in DP P2 such as "conflict with land" and

ST2-4

focuses on siting, which is not typical of a CEQA analysis and is repetitive of analyses under DP P2. CEQA analyses typically focus much more on General Plans. Additionally, Delta Plan mitigation measure 18-1(a) goes beyond CEQA thresholds and incorporates recreational opportunities into the measure. DWR requests that the Council consider limiting mitigation measures to what is necessary to mitigate the impact per standard CEQA thresholds.

Additional Comments Regarding Specific Mitigation Measures:

8-1(g): The addition of "Temporarily disturbed areas shall be restored to original conditions" may not always be feasible or the preferred mitigation depending on the project, the area affected, and the options for restoration.

8-1(h): The deletion of "would be preferable" seems unwarranted considering that even in areas that facilitate wildlife movement, synthetic materials that appear natural have provided benefits (such as fake boulders or trees).

8-1(i): Incorporating scenic viewpoints may pose a safety issue in some areas and may not be feasible to implement in all covered actions.

21-1, Carbon Offsets, 2(d): Carbon offsets are regulated by the air quality management districts and some approved offset programs include things like education so including a requirement that the offset be "real, additional, and permanent" appears contradictory to the authority of other regulatory entities.

4-2(h): The referenced native plant survey protocol indicates that surveys should be performed when the plant is identifiable, which is usually during the flowering or fruiting season, but not necessarily restricted to the blooming period. However, the revised text requires surveys during the blooming period.

4-2(g) Relocation and associated compensatory mitigation may not be required for all special-status plants. This measure does not consider that, in some instances, it may be more appropriate to consider the overall local native species population when assessing impacts and appropriate mitigation, rather than evaluating the impacts to native plants at the individual level.

18-1(a): The standard CEQA thresholds for recreation are whether the project would increase use of a recreational facility, resulting in or accelerating deterioration, or if the project would result in the need to expand or construct new recreational facilities. However, the thresholds listed on page 5.15-15 of the draft PEIR and this new mitigation measure include references to impacts on recreational opportunities, which go beyond what is traditionally analyzed under CEQA. The definition of a recreational opportunity is unclear making it difficult for a lead agency to analyze and avoid or mitigate the impact.

As an active partner in the Delta, the Department of Water Resources appreciates the opportunity to provide feedback on the Draft PEIR for the proposed amendments to Delta Plan Chapter 4. Please note that DWR has also included its prior comments on the proposed Chapter 4 amendments that are not discussed above to reiterate those points in the hopes that they will help shape future revisions to these important documents. As always, DWR welcomes additional discussion with the Council to resolve challenges for project implementation in the Delta. Please contact Kristopher Jones at (916) 873-5709, should you have any questions or want to discuss this further.

Sincerely,



Cindy Messer  
Lead Deputy Director

ST2-4  
cont.  
ST2-5  
  
ST2-6  
  
ST2-7  
  
ST2-8  
  
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ST2-10

**Previously submitted comment on the proposed Chapter 4 Amendments:**ER Policy “A”. Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits, and ER Recommendation “A”. Increase Public Funding for Restoring Ecosystem Function (NEW)

DWR sees value in project proponents providing additional information under new ER Policy “A” as it may better guide collective efforts going forward. However, if tier I and II projects may be limited going forward in the future for a variety of reasons, it will be important that projects in lower tiers also receive due consideration and funding to ensure the full suite of values in the Delta.

ER P4. Expand Floodplains and Riparian Habitats in Levee Projects (REVISED)

DWR appreciates the Council’s acknowledgment that setback levees may only be feasible in limited areas of the Delta. Even in these limited areas where physical characteristics may technically support a setback levee, many other factors influence feasibility, including cost. The additional requirement for alternatives evaluation, and studies to support it, could delay project implementation due to evaluations of management actions that may still be infeasible to implement. For projects that need to comply with this policy, a more detailed definition of “feasibility” would help with planning and evaluation processes.

ER P2. Restore Habitats at Appropriate Elevations (REVISED)

DWR recognizes the benefit of matching projects and habitat types to their appropriate elevations, and already seeks to do so. However, site selection and design are also driven by many factors in addition to the best available science. While the plan recognizes necessary deviations from this principle, such as managed wetlands in deeply subsided areas for subsidence reversal, DWR is concerned application of this policy could prove challenging to implement. For example, it may become particularly challenging for projects to accommodate unknown future conditions associated with sea level rise. We request that the proposed evaluations be better defined so expectations may be clarified.

ER P3. Protect Opportunities to Restore Habitat (REVISED)

DWR recognizes the need to preserve the opportunity for habitat projects as the areas of appropriate elevation in the Delta are a limited resource. However, these amendments may also have unintended consequences. It is unclear if the existing ER P3 language was targeting specific land use changes. DWR requests further clarification on application of this policy, especially where important public safety projects may be impacted.

ER Recommendation “G”. Align State Restoration Plans and Conservation Strategies with the Delta Plan (NEW)

DWR requests additional clarification of what alignment might mean for the Central Valley Flood Protection Plan (CVFPP) Conservation Strategy.

DWR also notes a minor, editorial change that Table 4-1 should include the Central Valley Flood Protection Board (CVFPB) as the CVFPP covers portions of the Delta, the CVFPB has permitting authority, and is the non-federal sponsor on several existing facilities throughout the Delta.

ST2-11

## **ST2 California Department of Water Resources**

### **Responses to Comments from ST2 California Department of Water Resources**

#### **ST2-1:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR.

With regard to the request to provide clarification related to the effective date of proposed regulatory policies and impact of the proposed regulatory amendments on existing projects, the effective date of proposed regulatory changes would typically be on one of four quarterly dates based on when the final regulations are filed with the Secretary of State after the completion of the rulemaking process. The rulemaking process for new or revised Delta Plan ecosystem policies would proceed after the Council completes the CEQA review process and if the Council adopts the Delta Plan Ecosystem Amendment and authorizes staff to initiate the rulemaking process.

For informational purposes (and subject to change based on the rulemaking process), Council staff described the following approach in a May 2020 staff report to the Council and has also discussed this approach with the California Department of Water Resources (DWR):

- ♦ For new Policy ER P “A”: All covered actions would be subject to ER P “A” starting on the applicable quarterly effective date after filing with the Secretary of State. Council staff do not anticipate that existing projects would need to be redesigned or reconfigured in order to demonstrate consistency with this policy. Project-level data collection from this policy would be most useful if existing, planned projects are included.
- ♦ For proposed revisions to ER P2, ER P3, and ER P4: Covered actions for which a NOP, Negative Declaration (ND), or Mitigated Negative Declaration (MND) has been issued prior to the regulatory effective date would be exempt from the amended ER P2, ER P3, and ER P4 for a period of two years following the effective date of the amended regulation. Such covered actions would certify consistency with the Delta Plan using the current versions of those regulations. The amended regulations would become applicable to these projects at the expiration of the two-year period.

#### **ST2-2:**

It is within the Council’s authority to adopt and modify mitigation measures that were previously adopted and incorporated into the Delta Plan, as amended April 26, 2018 (Delta Plan Mitigation Measures) for covered actions to be implemented in response to the proposed Ecosystem Amendment.

The Draft PEIR describes how and why Delta Plan Mitigation Measures have been revised and explains why the proposed revisions to the Delta Plan Mitigation Measures would not have a significant environmental effect (see Section 5.1, page 5.1-8). As presented in Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-8, the Delta Plan Mitigation Measures (revised mitigation measures) have been revised to reflect updated formatting and current standards. The revised mitigation measures

would continue to be implemented as part of the Proposed Project and would apply to covered actions as required by Delta Plan policy G P1(b)(2) (Cal. Code Regs. title 23, section 5002(b)(2)).

Each resource section in Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, concludes that the revised mitigation measures are equally effective and would not result in any new or substantially more severe significant impacts than the previously adopted Delta Plan Mitigation Measures.

### **ST2-3:**

See response ST2-2 explaining that the revised mitigation measures were determined to be equally effective and would not result in any new or substantially more severe significant impacts than the previously adopted Delta Plan Mitigation Measures.

As described in Draft PEIR Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, on page 5.1-8, in many cases, revised mitigation measures, or equally effective feasible measures adopted as part of covered actions, would reduce impacts identified in this PEIR to a less-than-significant level. However, the specific locations, scale, and timing of possible future facilities are not known at this time, and the specific resources present within the project footprint of construction sites and new facilities in the Primary Planning and Extended Planning Areas cannot be determined. Therefore, in many cases, it is not possible to conclude that significant adverse effects would be avoided or reduced to a less-than-significant level. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed, and implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council. Therefore, identified significant impacts would remain significant and unavoidable for covered actions.

For non-covered actions, implementation of revised mitigation measures is recommended to reduce potentially significant impacts. Adopting and incorporating Delta Plan mitigation measures is not a requirement for non-covered actions, because Delta Plan policy G P1(b)(2) would not apply to such actions. Accordingly, for non-covered actions, this PEIR assumes, as CEQA requires (see CEQA Guidelines section 15091(a)(2)), that potentially significant environmental impacts would be significant and unavoidable, even if feasible mitigation measures are available, because they would be within the responsibility and jurisdiction of an agency other than the Council.

In addition, Delta Plan policy G P1(b)(2) (Cal. Code Regs. title 23, section 5002(b)(2)) specifies that any covered action that is not exempt must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan, or substitute mitigation measures that the proposing agency finds are equally or more effective. Monitoring and reporting on implementation of the Delta Plan Mitigation Measures is accomplished through the certification of consistency process required by policy GP 1 (Cal. Code of Regs. title 23, section 5002).



**ST2-4:**

As described in response ST2-2, It is within the Council's authority to adopt and modify mitigation measures that were previously adopted and incorporated into the Delta Plan for covered actions to be implemented in response to the proposed Ecosystem Amendment.

The goal of mitigation measures is to minimize or avoid identified significant impacts. As described in ST2-3, in many cases revised mitigation measures, or equally effective feasible measures adopted as part of covered actions (or recommended for non-covered action), would reduce impacts identified in this PEIR. The example provided in the comment refers to Revised Mitigation Measure 7-1(b) which would minimize impacts associated with the conversion of Farmland, land zoned for agriculture, and land subject to a Williamson Act contract to nonagricultural uses by designing future projects to minimize potential conflicts to the greatest extent feasible. This mitigation measure requires avoiding conflicts with existing policies and/or contract restrictions rather than introducing new policies or restrictions. It is one of multiple proposed mitigation measures (7-1(a) through (h)) that would minimize potential conversion of Farmland to non-agricultural use or conflicts with Williamson Act lands attributed to projects implemented by other entities in response to the Ecosystem Amendment.

**ST2-5:**

As described in Section 5.1, on page 5.1-9, the thresholds of significance used in the PEIR include those discussed in Appendix G of the State CEQA Guidelines; criteria based on factual or scientific information; criteria based on regulatory standards of local, State, and federal agencies; and criteria used by the Council. The specific criterion related to recreation opportunities that was used by the Council for the PEIR is that a significant impact would occur if the Proposed Project would directly impair, degrade, or eliminate recreational facilities and opportunities (see Section 5.15, page 5.15-16). Revised Mitigation Measure 18-1(a) would minimize impacts associated with the direct impairment, degradation or elimination of recreational facilities and opportunities. It is within the Council's authority to adopt and modify mitigation measures that were previously adopted and incorporated into the Delta Plan. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

See response ST2-2 explaining that it is within the Council's authority to revise mitigation measures that were previously adopted and incorporated into the Delta Plan. It also describes that the revised mitigation measures described and analyzed in the Draft PEIR were determined to be equally effective and would not result in any new or substantially more severe significant impacts than the previously adopted Delta Plan Mitigation Measures.

See response ST2-3 for how a covered action must either include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan, or substitute mitigation measures that the proposing agency finds are equally or more effective.

See also response OR3-77 for revisions to Revised Mitigation Measure 18-1(a).

**ST2-6:**

As described in response ST2-3, Delta Plan policy G P1(b)(2) (Cal. Code Regs. title 23, section 5002(b)(2)) specifies that any covered action that is not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan, or substitute mitigation measures that the lead agency for the covered action finds to be equally or more effective. If the lead agency determines that an applicable mitigation measure is not feasible, the lead agency must adopt and incorporate substitute mitigation measures that are equally or more effective than the revised mitigation measures.

**ST2-7:**

Revised Mitigation Measure 21-1 requires the implementation of; “GHG mitigation measures listed in the most recent applicable air district, state, regional, or state-of-the art guidance.” The mitigation measure also states that “the measures are examples,” and that the list provided is not intended to be exhaustive, but instead serves as a guide for best management practices (BMPs) that can be implemented (as applicable) during design, construction, operation, and maintenance of project facilities. Accordingly, the language included in Revised Mitigation Measure 21-1 under **Carbon Offsets** is intended to be guidance for determining the amount of mitigation required for carbon offset impacts and would be selected and implemented based on the most recent applicable air district, state, regional, or state-of-the art guidance.

As explained in Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-6, the analysis in the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances.

**ST2-8:**

The comment states that the protocol referenced in Revised Mitigation Measure 4-2(h) indicates that surveys should be performed when the plant is identifiable, which is usually during the flowering or fruiting season, but not necessarily restricted to the blooming period as stated in the mitigation measure. Revised Mitigation Measure 4-2(h) is revised to remove the requirement that surveys must be conducted during the blooming period as follows:

4-2(h) Conduct preconstruction surveys (by a qualified botanist) to evaluate the potential for special-status plant habitat at the project site, should suitable habitat for any special-status plant species be identified. ~~Protocol-level surveys for potentially occurring special-status plants that could be removed or disturbed shall occur during the respective blooming period(s) for the plant(s) that could be present at the project site.~~ Protocol-level surveys shall be conducted in accordance with the latest edition of DFW’s *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*.

The comment also states that relocation and associated compensatory mitigation may not be required for all special-status plants. Revised Mitigation Measure 4-2(f) through

(l) presents measures to minimize impacts to special-status plant species ranging from avoidance to minimization measures in the event the habitat cannot be avoided. Revised Mitigation Measure 4-2(g) requires that “to the maximum extent practicable” project elements be designed to avoid effects that would lead to a substantial loss of special-status plant species. It does not require relocation and associated compensatory mitigation.

See response ST2-3 for a discussion of incorporation of substitute mitigation measures that the proposing agency finds to be equally or more effective than the Delta Plan Mitigation Measures; or an explanation of why such mitigation is not feasible.

**ST2-9:**

Pursuant to CEQA Guidelines section 15064.7(b), Lead Agencies have discretion to formulate their own significance thresholds. Thresholds must be supported by substantial evidence, which is defined in the CEQA Guidelines section 15384(b) to mean “facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.” The determination by a Lead Agency of whether a project may have a significant effect on the environment calls for careful judgment, based to the extent possible, on scientific and factual data (CEQA Guidelines section 15064(b)(1)). Existing restoration projects within the Primary Planning Area and the Delta Watershed Area of the Extended Planning Area have had the potential to impair, degrade, or eliminate recreational facilities and opportunities; therefore, the Council included an additional threshold of significance for the Proposed Project in Section 5.15, *Recreation*.

See Comment ST2-5 regarding the thresholds of significance used in the PEIR, including the specific criterion related to recreation opportunities that was used by the Council for the PEIR stating that a significant impact would occur if the Proposed Project would directly impair, degrade, or eliminate recreational facilities and opportunities (see Section 5.15, page 5.15-16). Specific recreation opportunities addressed in the PEIR include bird-watching, hunting, recreational fishing, walking, and on-water recreation (e.g., boating or kayaking) (see Section 5.15, pages 5.15-24 to 5.15-27). Revised Mitigation Measure 18-1(a) would minimize impacts associated with the direct impairment, degradation or elimination of recreational facilities and opportunities. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

See also response OR3-77 for revisions to Revised Mitigation Measure 18-1(a).

**ST2-10:**

The Council acknowledges DWR’s contribution to the development of the proposed Ecosystem Amendment. This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

1   **ST2-11:**

- 2   This comment addresses the proposed amendment and not the adequacy or content of  
3   the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed  
4   Ecosystem Amendment for information about the extensive process undertaken to  
5   develop the proposed Ecosystem Amendment.

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

**CALIFORNIA STATE LANDS COMMISSION**

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November 30, 2021

File Ref: SCH #2020050219

Delta Stewardship Council  
Harriet Ross, Assistant Planning Director  
715 P St, Suite 15-300  
Sacramento, CA 95814

VIA ELECTRONIC MAIL ONLY ([ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov))

**Subject: Draft Program Environmental Impact Report for Delta Plan Ecosystem Amendment, multiple counties**

Dear Harriet Ross:

The California State Lands Commission (Commission) staff has reviewed the Draft Program Environmental Impact Report (PEIR) for the Delta Plan Ecosystem Amendment (Project), which is being prepared by the Delta Stewardship Council (Council). The Council, as the public agency established by the Delta Reform Act to develop and adopt the Delta Plan is proposing to carry out the Plan Amendment as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses.

**Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its

ST3-1

admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court.

Based on the review of the PEIR, Commission staff understands that the Project may result in future actions that fall within the Commission's jurisdiction. Therefore, a lease from the Commission may be required for any future actions that occur on or require improvements placed on State sovereign land. An application may be submitted to the Commission through the online application portal (OSCAR.slc.ca.gov). If you have questions specific to jurisdiction, lease provisions, or the application process, please contact Public Land Management Specialist Al Franzoia (contact information below).

### **Project Description**

The Council proposes the Project to their original PEIR from 2013 to meet the Council's objectives and needs for ecosystem restoration, protection, and enhancement as follows:

- Create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.
- Implement large-scale restoration projects that restore ecosystem function, increase resilience to climate change, are compatible with adjacent land uses, and that support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place.
- Protect opportunities to restore ecosystems and safeguard against land loss by taking sea level rise and long-term flood risk into consideration; protecting land from development; reducing, halting, or reversing subsidence; and incentivizing agricultural land management practices that support native wildlife and counter subsidence.
- Prevent introduction of non-native invasive species; manage non-native invasive species impacts; and improve fish management to support the reproductive success and survival of native fish.
- Facilitate implementation of ecosystem protection, enhancement, restoration, and mitigation projects in the Delta by improving the efficiency and effectiveness of actions by public agencies and private organizations engaged in proposing, approving, and permitting such projects.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Project Component 1. Amendment of Chapter 4 of the Delta Plan to address the shift from the Bay Delta Conservation Plan to EcoRestore and provide a more

ST3-1  
cont.

ST3-2

comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta.

The PEIR identifies Alternative 3 – Reduced Restoration Footprint as the Environmentally Superior Alternative.

↑  
ST3-2  
cont.

### **Environmental Review**

Commission staff request that the Council consider the following comments on the PEIR, to ensure that impacts to State sovereign land are adequately analyzed.

### **Cultural Resources**

1. **Submerged Cultural Resources:** The PEIR evaluated potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff request that the Council contact Staff Attorney Jamie Garrett (contact information below) to obtain shipwrecks data and Commission records for the Project area. The Commission's database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown.

Please note that any submerged archaeological site or submerged historic resource that has remained in State waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event historic or cultural resources are discovered during any potential construction activities as a result of the Project, personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

ST3-3

2. **Title to Resources Within Commission Jurisdiction:** The PEIR should state that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff request that the Council consult with Staff Attorney Jamie Garrett should any cultural resources on state land be discovered during any potential construction as a result of the Project.

Staff requests that the following statement be included in the PEIR's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

ST3-4

Thank you for the opportunity to comment on the PEIR for the Project. We request that you consider our comments before certifying the PEIR. Please send an electronic copy of the Final PEIR when it becomes available. Refer questions concerning environmental review to Christine Day, Environmental Scientist, at [christine.day@slc.ca.gov](mailto:christine.day@slc.ca.gov) or (916) 562-0027. For questions concerning archaeological or historic resources under

ST3-5

Harriet Ross

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November 30, 2021

Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov) or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact Al Franzoia, Public Land Management Specialist, at [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov) or (916) 574-0992.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Dobroski".

Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Day, Commission  
A. Franzoia, Commission  
J. Garrett, Commission



## **ST3 California State Lands Commission**

### **Responses to Comments from ST3 California State Lands Commission**

#### **ST3-1:**

This comment describes the State Land Commission's jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways.

As discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Once proposals for specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, these entities would coordinate with the State Land's Commission, as appropriate. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

#### **ST3-2:**

This comment summarizes the objectives of the Proposed Project and refers to the environmentally superior alternative identified in the Draft PEIR. This comment also lists components of the Proposed Project identified in the Draft PEIR that could have the potential to affect State sovereign land.

#### **ST3-3:**

Revised Mitigation Measure 10-1(f) requires site investigations including review of the State Lands commission Shipwrecks Data Base and other SLC files prior to beginning ground-disturbing activities to identify submerged cultural resources. Revised Mitigation Measure 10-1(g) requires that if any submerged or buried shipwrecks or other maritime-related cultural resources are discovered during construction activities, work shall halt within 100 feet of the discovery until the find can be evaluated by a qualified archaeologist or maritime archaeologist as appropriate. In addition, SLC shall be consulted.

See response ST3-4 for revisions to Revised Mitigation Measure 10-1(f).

#### **ST3-4:**

Revised Mitigation Measure 10-1(f) is revised and renumbered as follows:

10-1(fh) Before any project-specific ground-disturbing activities begin, conduct investigations to identify submerged cultural resources. These investigations would include review of State Lands Commission (SLC) Shipwrecks Database and other SLC files, and remote sensing surveys conducted under the direction of a qualified maritime archaeologist. Title to all abandoned shipwrecks, archaeological sites, and historic cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the SLC. If avoidance of significant submerged cultural resources is not feasible, a permit from SLC may be necessary to

1                   conduct resource documentation and possible salvage of artifacts, ship  
2                   components, and other data and objects.

3   As required by Pub. Resources Code section 6313, the final disposition of  
4   archaeological, historical, and paleontological resource recovered on State land under  
5   jurisdiction of the SLC will be approved by the SLC. Therefore, no further change is  
6   made to Revised Mitigation Measure 10-1(h).

7   **ST3-5:**

8   The Final EIR, including responses to agency comments, will be made available on the  
9   Council's website at: [deltacouncil.ca.gov](http://deltacouncil.ca.gov) and the State Lands Commission will be  
10   notified 10 days prior to the Council meeting at which certification of the PEIR and  
11   approval of the Proposed Project will be considered.

**DELTA PROTECTION COMMISSION**

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Sacramento County Board of  
Supervisors

**Chuck Winn, Vice Chair**  
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Yolo County Board of  
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Supervisors

**John Vasquez**  
Solano County Board of  
Supervisors

**George Fuller**  
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Solano Counties

**Paul Steele**  
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**Tom Slater**  
North Delta Reclamation  
Districts

**Nick Mussi**  
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**David Kim**  
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**Wade Crowfoot**  
CA Natural Resources Agency

**Brian Bugsch**  
CA State Lands Commission

Ex Officio Members

**Honorable Jim Frazier**  
California State Assembly

**Honorable Susan Talamantes  
Eggman**  
California State Senate



November 30, 2021

Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814  
via email:ecosystemamendment@deltacouncil.ca.gov

RE: Delta Plan Ecosystem Amendment PEIR

Dear Ms. Ross:

The Delta Protection Commission (Commission) is a California State agency created by the Delta Protection Act of 1992, which declared “the Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the state to recognize, preserve and protect those resources of the Delta for the use and enjoyment of current and future generations” (California Public Resources Code (PRC) section 29701).

The Delta Reform Act of 2009 (Chapter 5, Statutes of 2009), as well as 2009 amendments to the Delta Protection Act of 1992, declared that the State’s basic goals for the Delta are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem “in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place” (PRC section 29702(a) and Water Code section 85054). Importantly, the law identifies the Commission as a “forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta” (PRC section 29703.5(a)). It directs the Commission to recommend ways to protect and enhance the Delta’s unique values to the Delta Stewardship Council.

Accordingly, Delta Protection Commission staff have provided input on “Delta as Place” considerations throughout the Council’s comprehensive process to develop the proposed amendment to Chapter 4 of the Delta Plan (Protect, Restore and Enhance the Delta Ecosystem). The Draft

ST4-1

Program Environmental Impact Report (PEIR) represents a significant milestone in this process and reflects the Council's effort to take full advantage of feedback received on the Notice of Preparation. We have reviewed the draft PEIR for the proposed amendment and offer the following comments.

↑  
ST4-1  
cont.

The Draft PEIR assesses program-level impacts anticipated from implementation of the proposed policy, recommendation, and performance measure amendments to the existing Chapter 4. Commission staff have some general comments on the PEIR alternatives analysis, as well as a specific recommended change in mitigation.

We believe a more achievable and reasonable balance of potential impacts and mitigations would be accomplished by reducing the target restoration acreage, which reduces impacts to agricultural lands in the Delta, and allows time for adaptive management process-led decisions to guide adjustment of restoration approaches.

The PEIR should acknowledge that not enough is known about the results achieved with existing restoration targets and projections. The preferred alternative (Proposed Amendment) target for restored acres (60,000-80,000 acres by 2050) is challenging to consider in light of the very real impact that level of restoration would have on Delta agriculture, the primary driver of the regional economy. The tidal wetlands target, for example, is remarkably close to what was proposed in the Bay Delta Conservation Plan (BDCP), which at the time was estimated to reduce agricultural revenues by tens of millions of dollars annually (Economic Sustainability Plan, 2012, pp. 142-145).

ST4-2

The Commission believes that a reduced acreage target such as suggested by either Alternative 1 (Agricultural Working Lands Protection Emphasis) or Alternative 3 (Reduced Restoration Footprint Emphasis /Environmentally Superior Alternative), or a combination of both, is more practical, meaningful and achievable given past experience. Since there will likely be two five-year review cycles of the Delta Plan prior to 2030, targets could be scaled up based on measurable progress, representing a truly adaptive management approach that would be bold, innovative and at the same time achievable.

Adaptive management should play a more significant role as a driver of the proposed Ecosystem Amendment. Best available scientific research can inform design and scale, but the existing Delta Plan Chapter 4 emphasizes the essential role of adaptive management in providing guardrails to keep projects on course: "Active adaptive management that incorporates explicit experimentation should be a key component of process-based restoration projects. Although restoration in the Delta has been planned for decades, implementation of large-scale, process-

ST4-3

based restoration projects has only been initiated recently, which underscores the importance of monitoring and adaptively managing those projects.” (Delta Plan 2013, p. 116)

The proposed Chapter 4 amendment also adds the following:

“Extensive baseline data are needed to understand the effectiveness of restoration actions, to adaptively manage projects, and to improve restoration design in the future...Lessons learned from adaptive management will be used to improve planning, design, and implementation of similar, future process-based restoration projects. Monitoring and adaptive management of restoration projects should be pursued over time scales that are sufficiently long to observe and adapt to changes in conditions...When adaptive management experiments are included in the design of ecosystem restoration projects (e.g., the Dutch Slough Tidal Marsh Restoration Project), future improvement in restoration design can be expected.” (proposed Delta Plan Chapter 4 amendment, p. 4-66)

The PEIR should reflect clearly that the benefits of adaptive management are not currently available to inform the targets proposed in the Preferred Alternative. There simply is no best available science, or even a clear understanding, that the proposed restoration acreages will achieve the ecosystem goals, nor is there sufficient data from the early restoration projects to indicate a level of success and function achieved that can be extrapolated to such a degree as the Preferred Alternative targets. While recent Delta restoration projects are not to be minimized, the fact remains that only a few thousand acres of restoration projects have been completed and are being monitored. As implied by the section quoted above, not all restoration projects have incorporated adaptive management experiments that might provide future best available empirical science.

In addition to a lack of adaptive management evidence, we remain concerned that the lack of science on Delta as Place values (the potential impact on agricultural and recreation economies, for example) results in either no proposed mitigation or mitigation of untested effectiveness. For example, the paper “Towards the Protection, Restoration, and Enhancement of the Delta Ecosystem: A Synthesis” (2018) states that target outcomes of ecosystem restoration should incorporate “the capacity for the ecosystem to adapt to existing and anticipated environmental change” (McDonald et al. 2016). It does not appear that the target outcomes proposed by the Preferred Alternative include comparable evaluation of the capacity of the agricultural and recreation economies to adapt to the changes the amendment would bring. Thus, accurate impact analysis is dubious and mitigation still more so. Because of inadequate consideration (until recently) of Delta socioeconomic impacts, there remains an inequitable consideration of

ST4-3  
cont.

the relative costs of trade-offs between a compromised ecosystem and the communities of the Delta. It is not sufficient to simply identify residual significant unavoidable impacts. The PEIR could provide more than perfunctory assessment of the alternatives, for example, considering the potential for adaptive management to inform scaling up from the reduced target acreage alternative (Alternative 3) over time, or increased potential for bringing new or underutilized lands into agricultural production to offset farmland losses (Alternative 1).

ST4-3  
cont.

**Recommended Mitigation:**

The proposed Chapter 4 amendment modifies Core Strategy 2, emphasizing urgency and articulating the need for “tens of thousands of acres of functional, diverse, and interconnected habitats” that “dictates a change in existing approaches to restoration in the Delta.” It also acknowledges the need to respect local land uses and support or complement Delta as Place values.

[A]n integrated, adaptive approach to ecosystem restoration requires that restoration projects focus on ecosystem function and are designed and located to continue functioning under changing climate conditions. Restoration projects should also be compatible with adjacent land uses and support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place. (p. C-1.33, Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report – Appendix C)

The proposed text for Core Strategy 2 further emphasizes improved project design and adds New ER Policy “A” which requires covered actions to include disclosure of contributions both to restoring ecosystem function and to providing social benefits. Core Strategy 2 also includes a New ER Recommendation “B” that covered action project proponents use the Good Neighbor Checklist (provided in Appendix Q2) to coordinate restoration with adjacent uses.

ST4-4

We suggest the New ER Recommendation “B” would be more effective as a required mitigation measure, both to avoid or reduce conflicts with existing uses and to improve project design. Recommendations are too easily treated casually or ignored altogether by covered action project proponents. The Good Neighbor Checklist is as important to ensuring thorough consideration of potential land use conflicts or unintended impacts as are the application requirements for regulatory permits. The Good Neighbor Checklist provides a detailed mechanism to ensure adequate planning with respect to adjacent farmlands and neighboring properties, infrastructure, and water resources. Furthermore, requiring the Checklist will ensure that coordination costs are adequately budgeted, thus making coordination more likely to be successful.

Delta Stewardship Council  
Delta Plan Ecosystem Amendment PEIR  
Page 5 of 5

Thank you for the opportunity to comment. We look forward to continuing our involvement to ensure that the protection of local land use decisions and enhancement of the unique Delta values, including agricultural, recreational and cultural values, are reflected in the amended Delta Plan Chapter 4.

Sincerely,



Erik Vink  
Executive Director

cc: Chair Don Nottoli and Members, Delta Protection Commission

ST4-5

## **ST4 Delta Protection Commission**

### **Responses to Comments from ST4 Delta Protection Commission**

#### **ST4-1:**

This comment provides background information on the Delta Protection Commission's input into development of Chapter 4 of the Delta Plan and recognizes Council efforts to incorporate comments into development of the Draft PEIR.

#### **ST4-2:**

This comment addresses alternatives to the proposed amendment within the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, which is the Proposed Project analyzed in the Draft PEIR.

As described in Draft PEIR Chapter 9 *Alternatives*, the principles used to guide selection of the alternatives analyzed in the Draft PEIR are governed by section 15126.6 of the CEQA Guidelines, which specifies that an EIR must do all of the following:

- ◆ Describe a reasonable range of potentially feasible alternatives to the project that could feasibly attain most of the basic objectives of the project;
- ◆ Consider alternatives that could reduce or eliminate any significant environmental impacts of the proposed project, including alternatives that may be costlier or could otherwise impede the project's objectives; and
- ◆ Evaluate the comparative merits of the alternatives.

As described in Chapter 9, the focus and definition of the alternatives evaluated in this PEIR are governed by the "rule of reason," in accordance with section 15126.6(f) of the CEQA Guidelines. That is, the range of alternatives presented in this Draft PEIR must permit a reasoned choice by the Council. CEQA Guidelines section 15126.6(e)(1)-(2) requires that an EIR evaluate a "No-Project Alternative," identify an "environmentally superior alternative" other than the no project alternative and identify alternatives that were considered during the scoping process but were eliminated from detailed consideration (section 15126.6(c)). Draft PEIR Chapter 9 section 9.2, *Alternatives Considered and Screening Criteria*, describes the development of a reasonable range of alternatives to the Proposed Project, the method used to screen the alternatives, and the alternatives considered but eliminated from detailed consideration in this document (Draft PEIR pages 9-2 through 9-9).

CEQA Guidelines section 15126.6(a) requires every EIR to describe and analyze a "range of reasonable alternatives" that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." "The range of alternatives required in an EIR is "only those alternatives necessary to permit a reasoned choice regarding the proposed project." (CEQA Guidelines section 15126.6(f)). This range is determined, in part, by the particular scope and purpose of the project under review. The selection of alternatives



1 must also be guided by CEQA's fundamental goal of environmental protection. See  
2 Pub. Resources Code sections 21000, 21001.

3 The Council gave close attention to each of the numerous alternatives proposed by the  
4 public, and many of the common themes and specifics of those proposals were  
5 incorporated into the alternatives to the Proposed Project. Draft PEIR pages 9-2 through  
6 9-5 contain additional information on the development of alternatives to the Proposed  
7 Project, based on information gathered during the development of the preliminary public  
8 review draft of the Ecosystem Amendment and during the Draft PEIR scoping process.

9 As suggested by the commentor, the Draft PEIR analyses reduced restoration acreage  
10 targets under Alternatives 1 and 3, which would significantly limit the number, size, type,  
11 and location of restoration projects contributing to a comprehensive approach to  
12 ecosystem protection, restoration, and enhancement in the Delta as compared to the  
13 Proposed Project. In comparison to the Proposed Project, these alternatives partially  
14 achieve the project objectives, although not to the same degree as the Proposed Project.

15 **ST4-3:**

16 See Topical Response 1: Development and Purpose of the Proposed Ecosystem  
17 Amendment for information about the extensive process undertaken to develop the  
18 proposed Ecosystem Amendment.

19 As described in Chapter 9, *Alternatives* on page 9-1, the PEIR includes alternatives that  
20 cover a range of potential targets and compares the environmental impacts and ability  
21 to meet project objectives. Alternatives were informed by input from stakeholders, the  
22 Delta Independent Science Board, and comments during scoping and on the  
23 preliminary public review draft of the Ecosystem Amendment. See also response ST4-2.

24 Adaptive management is defined in the Delta Reform Act as "a framework and flexible  
25 decision-making process for ongoing knowledge acquisition, monitoring, and evaluation  
26 leading to continuous improvements in management planning and implementation of a  
27 project to achieve specified objectives" (Wat. Code section 85052). Adaptive  
28 management can be applied at a program, plan or project level." Water management  
29 and ecosystem restoration projects that meet the Delta Reform Act's definition of a  
30 "covered action" are required to have an adaptive management plan and demonstrate  
31 adequate resources to implement the plan. Consideration of adaptive management is  
32 not required in the formulation of a range of reasonable alternatives. However, the  
33 Council anticipates continued regular assessment of progress toward restoration targets  
34 over time, which could inform target adjustments. As stated above and explained in  
35 Topical Response 2: Approach to the Environmental Analysis, alternatives were  
36 developed to reflect a range of potential outcomes that would reduce any significant  
37 environmental impact of the Proposed Project and were refined based on input from  
38 stakeholders.

39 **ST4-4:**

40 New Delta Plan Recommendation ER R "B", described in Chapter 3, *Project*  
41 *Description*, recommends the use of the Good Neighbor Checklist (included in Draft  
42 PEIR Appendix C, Text of Proposed Delta Plan Ecosystem Amendment, Appendix Q2,

1 p. C-3.4 1) to coordinate restoration projects with adjacent uses. This recommendation  
2 is intended to avoid or reduce conflicts with existing uses, including uses such as  
3 agriculture and recreation.

4 The Delta Reform Act establishes the authority of the Delta Stewardship Council and  
5 specifies specific roles and responsibilities. The Council is not required to mandate  
6 consideration of all topics covered in the Good Neighbor Checklist. Rather, the Council  
7 has developed specific mitigation measures (Revised Mitigation Measures 19-1(f) and  
8 (g), 6-2(a) through (d), and 7-1(a) through (h)) that address a subset of these issues.  
9 Pursuant to G P1(b)(2), State and local agencies proposing covered actions must  
10 require these measures to be included in the covered action, if they are applicable and  
11 feasible, or propose substitute measures that are equally or more effective than these  
12 measures.

13 **ST4-5:**

14 This comment is noted and will be forwarded to the Council.

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
 SACRAMENTO, CA 95821  
 (916) 574-0609 FAX: (916) 574-0682



November 30, 2021

Harriet Ross, Assistant Planning Director  
 Delta Stewardship Council  
 715 P Street, 15-300  
 Sacramento, CA 95814  
[ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

Subject: Comments on the Delta Plan Ecosystem Amendment PEIR (SCH No. 202050219)

Dear Ms. Ross,

The Central Valley Flood Protection Board (Board) appreciates the opportunity to comment on the Draft Program Environmental Impact Report (PEIR) for the proposed Delta Plan Ecosystem Amendment (Amendment) to the Delta Stewardship Council's (Council's) Delta Plan. The Council is proposing to amend Chapter 4 of the Delta Plan (*Protect, Restore, and Enhance the Delta*) to address the shift from the Bay Delta Conservation Plan (BDCP) to EcoRestore and provide a more comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta, as required to achieve the goals and strategies described in the Delta Reform Act. While the proposed Ecosystem Amendment does not involve construction or operation of specific facilities or other specific physical actions by Council, the Amendment does propose new, revised, and removed policies, recommendations, and performance measures. State and local agencies may be subject to compliance with these policies. The PEIR's analysis assumes that the proposed Ecosystem Amendment and the rest of the currently adopted Delta Plan would be implemented and achieve their desired outcomes, regardless of whether the outcomes are expressed as policies or recommendations.

The PEIR discloses and addresses potential environmental impacts associated with the types of projects that the proposed Ecosystem Amendment and the Delta Plan would encourage and promote in the Primary and Extended Planning Areas, and which may be implemented by other entities. The Amendment applies to the Sacramento–San Joaquin Delta, Suisun Marsh, watersheds that contribute flows to the Delta and areas of California with places of use receiving water from or conveyed through the Delta.

ST5-1

**Responsibility of the Central Valley Flood Protection Board**

The Board is the State's regulatory agency responsible for ensuring appropriate standards are met for the construction, maintenance, and operation of the flood control system that protects life, property, and habitat in California's Central Valley. The Board serves as the State

ST5-2

Ms. Harriet Ross

coordinator between local flood management agencies and the federal government, with the goal of providing the highest level of flood protection possible to California's Central Valley.

The Board operates under authorities as described in California Water Code (Water Code), which requires the Board to oversee future modifications or additions to facilities of the State Plan of Flood Control (SPFC). In addition, pursuant to assurances provided to the United States Army Corps of Engineers (USACE) by the Board on behalf of the State, the USACE Operation and Maintenance Manuals, Code of Federal Regulations, Title 33, § 208.10, and United States Code, Title 33, § 408, the Board is responsible for the operation and maintenance of the SPFC facilities. The USACE requires the Board to serve as the lead non-Federal sponsor for projects to improve or alter facilities of the SPFC pursuant to Code of Federal Regulations, Title 33, § 408. The State's objectives include fulfilling the USACE's expectations pursuant to the assurances provided to the USACE.

ST5-2  
cont.

### Encroachment Permit

Per California Code of Regulations, Title 23, Waters, Division 1 (Title 23), Section 6, approval by the Board is required for all proposed work or uses, including the alteration of levees within any area for which there is an Adopted Plan of Flood Control within the Board's jurisdiction. In addition, Board approval is required for all proposed encroachments within a floodway, on adjacent levees, and within any Regulated Stream identified in Title 23, Table 8.1. Specifically, Board jurisdiction includes the levee section, the waterward area between project levees, a minimum 10-foot-wide strip adjacent to the landward levee toe, the area within 30 feet from the top of bank(s) of Regulated Streams, and inside Board's Designated Floodways. Activities outside of these limits which could adversely affect Federal-State flood control facilities, as determined by Board staff, are also under the Board's jurisdiction. Permits may also be required for existing unpermitted encroachments or where it is necessary to establish the conditions normally imposed by permitting, including where responsibility for the encroachment has not been clearly established or ownership or uses have been changed. Potential projects or activities that may occur in the future in support of the Amendment's revised strategies, policies, and recommendations may be located within the Board's permitting authority, thereby requiring an encroachment permit.

ST5-3

### PEIR and Amendment Specific Comments

The Proposed Ecosystem Amendment's Core Strategy 5, Improve Institutional Coordination to Support Implementation of Ecosystem Protection, Restoration, and Enhancement, is proposed to address institutional and implementation barriers to restoration. New Recommendation ER R "F" designates the Delta Plan Interagency Implementation Committee (DPIIC) as the appropriate forum to develop specific plans and strategies to implement proactive restoration projects. In addition, new Recommendation ER R "G" suggest establishing a subcommittee to align State Restoration Plans and Conservation Strategies with the Delta Plan (including the Central Valley Flood Protection Plan (CVFPP)). These policies are relevant to implementation and alignment of the CVFPB's CVFPP. Also, Recommendation F's suggestion of a landscape-scale strategy for recreational access to existing and future restoration sites, where appropriate and while maintaining ecological value is relevant to Yolo Bypass Cache Slough Master Plan development efforts, of which CVFPB is an active participant.

ST5-4

Ms. Harriet Ross

The CVFPB welcomes the opportunity to coordinate with the DPIIC on the CVFPP and participate in the proposed subcommittee to align State Restoration Plans and Conservation Strategies with the Delta Plan (including the CVFPP). However, the CVFPB acknowledges that coordination would require additional resources from the CVFPB.

ST5-5

In addition, the CVFPB welcomes future coordination with the Council on the development of the Yolo Bypass Cache Slough Master Plan and corresponding efforts related to ecosystem accounting tools, goals, and policies.

### Closing

The potential risks to public safety, including increased flood risks, need to be considered when developing proposed projects that seek to modify flood control works or the hydrology of the water ways. Board staff is available to discuss any questions you have regarding the above comments. Please contact Megan Giglini at (916) 801-7188, or via email at [megan.giglini@CVFlood.ca.gov](mailto:megan.giglini@CVFlood.ca.gov) if you have any questions.

ST5-6

Sincerely,

*Ruth Darling*

Ruth Darling  
Acting Chief, Flood Planning and Programs Branch

ec: Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Megan Giglini  
[Megan.Giglini@cvflood.ca.gov](mailto:Megan.Giglini@cvflood.ca.gov)

**ST5 Central Valley Flood Protection Board**

**Responses to Comments from ST5 Central Valley Flood Protection Board**

**ST5-1:**

This comment summarizes the Proposed Project.

**ST5-2:**

This comment describes the Central Valley Flood Protection Board's (CVFPB) responsibilities.

**ST5-3:**

This comment describes the CVFPB's jurisdiction. As discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Once proposals for specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, these entities would coordinate with the CVFPB, as appropriate. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**ST5-4:**

This comment identifies elements of Core Strategy 5 of the proposed Ecosystem Amendment that are relevant to the CVFPB's planning efforts.

**ST5-5:**

This comment is noted and will be forwarded to the Council for consideration. The Council welcomes CVFPB's interest in coordinating on DPIIC's Restoration Subcommittee, the CVFPP, and the Yolo Bypass Cache Slough Master Plan.

**ST5-6**

This comment is noted and will be forwarded to the Council for consideration.

As described in response ST5-3, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

### 3.2.3 Comments from Local Agencies

This section contains a copy of the comment letters received from local agencies (see Table 3-4), and responses.

**Table 3-4  
Local Agencies Providing Comments on Draft Program Environmental Impact Report**

Letter #	Local Agency
LO1	Central Delta Water Agency
LO2	Delta Counties Coalition (Contra Costa, Sacramento, San Joaquin, Solano, Yolo)
LO3	East Bay Municipal Utilities District
LO4	Local Agencies of the North Delta
LO5	Lower Sacramento River/Delta North Regional Flood Management Agencies (Solano, Yolo, SAFCA, WSAFCA, RD 2068, Knights Landing Ridge Drainage District, RD 1600)
LO6	Regional San
LO7	Solano County Water Agency
LO8	Reclamation District 1002

**Constable, Daniel@DeltaCouncil**

---

**From:** Brett Baker <brettgbaker@gmail.com>  
**Sent:** Tuesday, November 30, 2021 5:59 PM  
**To:** Delta Council Ecosystem Amendment  
**Subject:** Fwd: Delta Plan Ecosystem Amendment PEIR

Some people who received this message don't often get email from brettgbaker@gmail.com. [Learn why this is important](#)

----- Forwarded message -----

From: **Brett Baker** <[brettgbaker@gmail.com](mailto:brettgbaker@gmail.com)>  
Date: Tue, Nov 30, 2021 at 5:11 PM  
Subject: Re: Delta Plan Ecosystem Amendment PEIR  
To: <[ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)>

Exhibits attached



[Exhibits for November 30 DSC ch 4 comments .pdf](#)

On Tue, Nov 30, 2021 at 5:02 PM Brett Baker <[brettgbaker@gmail.com](mailto:brettgbaker@gmail.com)> wrote:  
Please acknowledge receipt of the attached comments.

--

Brett G. Baker  
Attorney at Law  
Nomellini, Grilli & McDaniel

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--

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## CENTRAL DELTA WATER AGENCY

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### DIRECTORS

George Biagi, Jr.  
Rudy Mussi  
Edward Zuckerman

### COUNSEL

Dante John Nomellini  
Dante John Nomellini, Jr.

November 30, 2021

**Via Email to ecosystemamendment@deltacouncil.ca.gov**

Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento, CA 95814

Re: Delta Plan Ecosystem Amendment PEIR comments

### **Core Strategy 1 Should be amended as follows:**

#### *Core Strategy 4.1: Create More Natural Functional Flows*

*Restoring to a healthier estuary using more natural functional flows. The volume, timing, and extent of freshwater flows into and as outflow from the Delta affect the reliability of water supplies for the Delta and areas exporting water from the Delta and are critical to protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Substantially reduced SWP and CVP exports from the Delta watershed coupled with more functionally purposed flows into and as outflow from the Delta can support native species recovery, while providing more certainty to the water supply reliability for other uses. Freshwater flows should be allocated and focused to achieve a specific measurable result. Furthermore, the policy of the Council is that no transfer of water for export from the Delta Watershed be allowed unless D-1641 requirements, without any Temporary Urgency Changes, are and will be met. Approval of any such transfers should require adequate evaluation, monitoring and accounting of a) the actual timing and amount diverted and b) that such amount is truly surplus to the present and future needs within the Delta Watershed including the needs of fish and wildlife, properly functioning critical habitat, and the need to secure groundwater sustainability.*

To reiterate the Central Delta Water Agency's (CDWA) position on flows and the exportation of water from the Delta: Export of water from the delta Watershed by the SWP and CVP must be limited to water that is truly surplus to the present and future needs within the Delta and other areas of origin in addition to the needs of fish and wildlife. In addition to the statutes and case law that uphold the protections for these areas of origin, limiting exports will

LO1-1

help in the protection and enhancement of the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place, and perhaps more importantly help to achieve the policy of Water Code section 85021, which declares that the State's policy is "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency."

LO1-1  
cont.

### **Section 2.1.3 Actions that Will Not Have a significant Impact on the Achievement of the Coequal goals.**

- **Temporary water transfers of up to 1 year in duration.**

This policy is problematic for the protection and enhancement of the Delta Ecosystem. CDWA recommends that it be removed or greatly revised.

Water is routinely transferred through the Delta through various forums and contracts in order to meet shortfalls in supply throughout the state. Indeed, the Bureau of Reclamation has requested a transfer under Wat. Code, § 1725 in nine out of the last ten years. In 2021 alone the State Water Resources Control Board received petitions to transfer 901,200 acre feet of water under Wat. Code, § 1725. Ultimately, the board approved the transfer of 760,902 acre feet of water. In 2021 we also saw a Temporary Urgency Change (TUC) petition approved to augment water quality standards in that Delta, installation of the False River Barrier, in addition to curtailments throughout the Delta Watershed. CDWA submitted comments on the TUC petition as well as a majority of the transfer petitions under Wat. Code, § 1725 in 2020 and 2021. Many of these temporary transfers were repeated from prior years.

LO1-2

While this emerging trend in augmenting the underlying licenses and permits for diversion from the Delta is no doubt reflective of the State's hydrology, there also appears to be an increasing trend to move greater quantities of water by relying upon such changes without properly safeguarding other legal users of water, and the public trust and threatened and endangered species. It would appear that SWP and CVP contractors alike have come to rely upon such changes being approved in a manner that allows them to avoid the proper analysis and protections that would be required under Wat. Code, § 1735 et seq.

The current process and analysis of petitioned transfers and changes allows for individual transfers to be analyzed in a piecemealed, singular and partitioned fashion while the cumulative impacts are redirected to non-parties and ultimately result in real impacts to other legal users of water (including third party groundwater impacts), the public trust and threatened and endangered species (e.g. functionality of habitat). These impacts are greatest during dry periods, which coincides with a heightened demand to transfer water. In addition to the supply and ecosystem impacts associated with the exportation of the water itself, the return of impaired drainage is heightened during these periods of low flow in the Delta. The transfers themselves maybe temporary, but the ecosystem impacts are longstanding.

Furthermore, perpetuating this pattern and practice of facilitating such serial transfers induces an increased reliance on the Delta, and the redirected impacts to future water years result in further disruption to the reliability of water supply both within the Delta Watershed and areas that rely on the Delta for exports. CDWA included the following paragraph in our comments to the SWRCB regarding Wat. Code, § 1725 transfers and suggest that the Council adopt a similar policy:

“That no transfer of water for export from the Delta Watershed be allowed unless D-1641 requirements, without any Temporary Urgency Changes, are and will be met. Approval of any such transfers should require adequate evaluation, monitoring and accounting of a) the actual timing and amount diverted and b) that such amount is truly surplus to the present and future needs within the Delta Watershed including the needs of fish and wildlife, properly functioning critical habitat, and the need to secure groundwater sustainability.”

LO1-2  
cont.

**Core Strategy 2 Should be amended as follows:**

*Core Strategy 4.2: Protect and Enhance the Unique Cultural, Recreational, Natural Resource and Agricultural Values of the Delta.*

*Given the lack of correlation between restoration of tidal and floodplain habitat in the Delta to the fishery crisis, the projected impact of sea level rise and the detrimental impact caused by conversion of Delta land to tidal bay or tidal wetlands, the protection and enhancement of the Delta values must be focused on maintaining and improving the existing Delta levee systems and ensuring adequate water quality and flows. Due to projected sea level rise and climate change, habitat restoration in the Delta must be on lands in areas protected by levees and implemented in a manner which does not interfere with maintenance or improvement of existing Delta levee systems. Floodplain and riverine wetland restoration should be located upstream of the Delta and other areas projected to be tidal due to sea level rise.*

LO1-3

**AS CURRENTLY DRAFTED THE DSC STRATEGY FOR “ACHIEVING THE DELTA REFORM ACT VISION FOR THE DELTA ECOSYSTEM” UNDERMINES THE COEQUAL GOALS PROVIDED IN WATER CODE SECTION 85054. CONVERSION OF DELTA AGRICULTURAL LAND TO TIDAL WETLANDS OR TIDAL BAY DOES NOT PROTECT AND ENHANCE AGRICULTURAL VALUES AND THE SUBSTITUTION OF HABITAT FOR FLOW IN THE DELTA IS NOT SUPPORTABLE AS A MEANS OF PROTECTING AND ENHANCING RECREATIONAL AND NATURAL RESOURCE VALUES IN THE DELTA.**

LO1-4

The Delta was fully leveed and reclaimed by about 1930: “By 1930 all but minor areas of the swampland had been leveed and were in production.” (See page 8 of December 1960 Bulletin 76 - Exhibit 14.)

The USACE completed project levee construction on the San Joaquin River in the early 1960's. There are no significant changes in leveed areas or even riverine habitat in the Delta which appear to be the cause of the decline of the fisheries. In fact, there have been increases in Delta wetland habitat, including tidal wetland, during the periods of apparent decline. Mildred Island flooded in 1983 and has not been reclaimed. Little Mandeville and Little Frank's Tract flooded in the 1980's and have not been reclaimed. Lower Liberty Island levees were not restored and the area has been in a tidal wetland condition since at least 2002. Additionally, many adjacent acres of tidal wetland are currently being pursued in the Cache Slough region under the EcoRestore (see Exhibit 33)

Water Code section 12981 ("Unique resources with statewide significance; preservation") provides:

(a) The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance.

(b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that in order to preserve the Delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislature recognizes that it may not be economically justifiable to maintain all delta islands.

(c) The Legislature further finds and declares that funds necessary to maintain and improve the delta's levees to protect the delta's physical characteristics should be used to fund levee work that would promote agricultural, and habitat uses in the delta consistent with the purpose of protecting the delta's invaluable resources.

The benefits from preservation of the system of levees in the Delta extend statewide. The legislature established the Delta Levee Subvention Program and Delta Levee Special Projects Program to provide funding in addition to the local funding to maintain and improve Delta levees. The two programs are directed to the areas in the Primary Zone of the Delta where development is greatly restricted and to the very small historic communities therein. Past funding for the programs has included some general funds but mostly bond funding from periodic water related state general obligation bonds.

Many of such levees do not yet meet the recommended minimum agricultural standards in DWR Bulletin 192-82 or those in the USACE PL 84-99 Delta standards. Many merit improvement to much higher standards. All require ongoing maintenance and improvement. Since most areas are precluded from development by the primary and secondary zone limitations in the Delta Protection Act and Delta Stewardship Delta plan, the levee work is dependent upon the agricultural land ability to pay and constrained by Prop 218 requirements. Without levee improvement the risk of levee failure will remain high and increase with state predicted sea level rise, climate change and earthquakes.

LO1-4  
cont.

When Delta levees fail during the summer or dry periods there has historically been an interruption in exports from the Delta either due to salinity intrusion or difficulty in efficiently meeting Delta standards due to disruption of the expected hydraulics of the Delta. There are also issues with contamination, turbidity and increases in salinity due to increased evaporative losses. There can also be a shortening of the path for salinity to intrude into the Delta and reach the export pumps. A resulting increase in the tidal prism could also induce greater salinity intrusion.

The Delta Protection Act, Water Code section 12200 et seq. “prohibits project exports from the Delta of water necessary to provide water to which the Delta users are ‘entitled’ and water which is needed for salinity control and an adequate supply for Delta users.” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 139.)

Inconsistency with the referenced coequal goals statute is also evidenced from the system impacts. The Delta overlies sands and gravels which extend beneath numerous islands and tracts. When an area floods seepage usually increases in adjoining lands and levees increasing the risk of levee failure, causing damage to crops and rendering portions of the land unfarmable. Where there is urban development the seepage and increased pressure on the groundwater will result in shallow flooding of streets, homes, other structures and utilities. Wind across the flooded area generates waves impacting the unprotected interior levee slopes which could break through the flooded island levee causing damage to adjoining lands and levees. Over time the wind will wash away the flooded island levees including riparian habitat and greatly increase the wind wave height and run up on adjoining levees. If the flooded island is not promptly reclaimed the adjoining levees and drainage systems must be substantially improved and some of the damage will persist. If such reclamation is not accomplished additional levee failures and other adverse impacts will result. Franks Tract which flooded in 1938 is an example where the wind wave generation across the flooded area has eroded most of the remnant levee contributing to the 1980 levee failure on Holland Tract and requiring substantial improvements on adjoining islands beyond the agricultural standards to resist the increased wave action. Additionally, the loss of the levee along False River caused a more direct path for salinity intrusion to reach the export pumps. This triggered the need for the emergency placement of the temporary rock barrier in False River at a cost of about \$40 million.

Loss of the physical characteristics of the Delta includes the loss of farmland, miles of meandering waterways, erosion of channel islands, loss of riparian habitat along the levees, loss of protected areas for recreation, including boating, fishing, sightseeing, swimming and the like. When flooding occurs terrestrial habitat is destroyed, terrestrial species are displaced or drowned, some of which are endangered, fish become stranded and subject to greater predation, waterfowl of the Pacific Flyway lose critical wintering habitat, water quality is degraded due to spreading of contaminants including those from upstream sources such as hazardous sites, flooded waste treatment facilities, broken pipelines and the like, generation of methyl mercury, propagation of harmful algal blooms and the related toxins, increased water temperature, production of undesirable aquatic vegetation, propagation of vectors such as mosquitoes together with the spreading of related diseases and the harmful impact of chemicals used to control the same, increased evaporation of fresh water and the resulting increased concentration of salinity. The failure of Delta levees will result in substantial adverse impacts to human health and safety to those in urban areas and others passing or attempting to evacuate through the Delta area. The

LO1-4  
cont.

cumulative impact of contaminants, toxins, vectors and disruption of the evacuation routes through the Delta could result in significant additional loss of life.

Attached hereto as Exhibit 30 are the cover and pages 32 and 33 from DWR's June 15, 2007 Technical Memorandum, Delta Risk Management Strategy Phase 1, Impact to Infrastructure. The entire memorandum is available on the web under DRMS Technical Memorandum June 15, 2007. The memorandum provides the estimated replacement costs of Delta Infrastructure within Mean Higher High Water at \$6.1 billion (2005 dollars) and \$8.5 billion (2050 dollars). The estimated replacement cost within 100-year limits is \$56.3 billion (2005 dollars) and \$67.1 billion (2050 dollars).

Preservation of the physical characteristics of the Delta is critical to the preservation and enhancement of the Delta, the maintenance of water quality, and the conveyance of water through the Delta with or without a tunnel.

The State through the Central Valley Flood Protection Board (formerly the Reclamation Board) is the nonfederal sponsor for federal project levees and is obligated to operate and maintain the project levees in accordance with an Operation and Maintenance Manual incorporating USACE requirements. In most cases the State has contracted with a local agency to maintain the project levee in accordance with the Operation and Maintenance Manual. The local maintaining agency (LMA) in many cases is a Reclamation District. The USACE has become more demanding as to its Operation and Maintenance requirements including enforcement of the no vegetation requirements and has become less willing to proceed with reconstruction assistance. The USACE Operation and Maintenance is in reality the OMRR&R requirement. OMRR&R is "Operation, Maintenance, Repair, Rehabilitation and Replacement." The Maintenance responsibility for the State includes maintaining the integrity of the flood control system and designated floodways. "Levee inspection reports provided by the USACE indicate severe levee maintenance deficiencies in over 90% of State Plan of Flood Control levee systems." (See Exhibit 31 CVFPB Resolution No. 2018-06.) Inability of the LMA to fund the maintenance or lack of agreement to fund as defined will result in State funding or loss of USACE reconstruction assistance. USACE reconstruction assistance could be in the hundreds of millions of dollars.

FEMA assistance for non-project levee reconstruction after emergencies is dependent upon a good faith State effort to mitigate damages. The general policy question is why should federal money be used to repair damage resulting from the State's deferred action? The general approach in emergencies is locals exhaust their ability and then the State exhausts its ability up to \$100 million (a somewhat arbitrary number) and then FEMA will assist unless there is an issue of State deferred maintenance or failure to proceed with mitigation. In the case of repeated emergencies FEMA requires a mitigation plan. As a result of multiple Delta levee breaks in 1980 where the Director of the Department of Water Resources did not provide support but FEMA and State OES did, FEMA required a Flood Hazard Mitigation Plan for the Delta.

Attached hereto as Exhibit 32 is the Flood Hazard Mitigation Plan for the Sacramento-San Joaquin Delta dated September 15, 1983. The plan was prepared by the Department of Water Resources for the Office of Emergency Services and accepted by FEMA. The short term mitigation plan was to work towards a levee configuration with 1 foot of freeboard above the 100 year flood elevation, a 16 foot crown width, a 1.5 to 1 waterside slope, a 2 to 1 landside slope

LO1-4  
cont.

LO1-5



and an all-weather access road. (See Exhibit 32, p. 13.) This came to be known as the HMP Standard. It was recognized that the HMP Standard was not an engineered standard but merely a gage to reflect good faith improvement. The long term mitigation plan was to implement within 20 years a Delta Levee System plan “as described in the Corps’ Draft Feasibility Report, dated October 1982 and in the Department’s Bulletin 192-82, Delta Levees Investigation, dated December 1982 ...All islands should be included in the System Plan for stage construction, as recommended in the Corps’ plan.” (See Exhibit 32, p. 15.) Failure to continue funding the Delta programs will surely jeopardize future federal disaster assistance which could involve hundreds of millions and perhaps billions of dollars of recovery costs.

LO1-5  
cont.

Currently highways in the Bay-Delta region are loaded to capacity during much of the day. In the event of an emergency whether it be flood, earthquake, terrorist attack or other emergency the loss of highways through the Delta will greatly increase the loss of life.

LO1-6

Increased funding of the Delta Levee Subvention Program and the Delta Levee Special Projects Program together with continued funding of the urban levee programs applicable to Delta Urban levees should be a priority. A specific allocation for the Delta Levee Programs should be included in each water related General Obligation Bond Proposition. There should be a priority for meeting the minimum engineering standards as adjusted for progressive sea level rise. Until the levees meet the minimum engineering standards the funding for habitat should be separately identified and implemented off levee. Integrating habitat with levee work greatly increases the cost thereby delaying progress in meeting the minimum engineering standards. Concentrating habitat in larger blocks where it is less likely to be disturbed and as separately managed projects is more beneficial to wildlife. Due to sea level rise, the restoration of non-terrestrial habitat impacting the Delta must be located upstream of the Delta and the projected tidal zone.

LO1-7

**Core Strategy 3 Should be amended as follows:**

*Core Strategy 3: Protect Land for Restoration and Safeguard Against Land Loss*

*Because conversion of Delta land to tidal wetland whether by breaching or setting back levees has a detrimental impact on Delta water quality, floodplain restoration and riverine wetlands should be located upstream of the existing and projected tidal zone.*

LO1-8

Restored landscape in areas outside the Delta may be appropriate but in the Delta it is not supportable. Much of the organic soil of the delta has oxidized or subsided and the land area is lower than at the time of reclamation. Restoration will not result in floodplain but in a tidal bay. The Delta as defined in Water Code Section 12220 was defined by the reach of the tides. Water Code section 85320(b)(2)(C) requires the consideration of possible sea level rise of up to 55 inches, and possible changes in total precipitation and runoff patterns on habitat restoration activities considered in the environmental impact report. This section references consideration of BDCP but the same logic would require consideration in the subject EIR. The Administration’s predetermined single tunnel conveyance requires design to anticipate 10 feet of sea level rise by 2100. The contemplated landscape restoration in the Delta is conversion to tidal bay not

restoration to floodplain or even tidal wetland. The evidence appears clear that restoration of landscape in the Delta is not directed at the cause of the critical decline in fish species of concern which occurred after 1968.

The Division of Water Resources (predecessor to The Department of Water Resources) in the Sacramento - San Joaquin Water Supervisor's report for the year 1931 dated August 1932 and designated Bulletin 23 includes the results of studies of water consumption of tules and cat-tails. Exhibit 29-3 includes Tables 69, 74, 75 and 77 from such report. Consumptive use for open water surface is shown as 4.91 acre feet per acre, tules at 9.63 acre feet per acre, and alfalfa at 3.51 acre feet per acre. To examine the relatively high consumptive use for tules the U.S. Department of Agriculture undertook a continuation of the study of consumptive use for asparagus, tules and cattails. The tables show an average of 14.63 acre feet per acre for cat-tails and 13.48 acre feet per acre for tules. Results from cat-tails and tules grown in tanks at Camp 3, King Island for 1931 are shown in Table 77. The result for normal sized tules was 8.0 acre feet per acre.

The increased loss of fresh water due to creation of tidal and wetland habitat is clear. Exhibit 29-2 is Table A-5 from DWR Bulletin 168, October 1978 which shows the annual Et values for various crops and for Riparian Vegetation and Water Surface. The Riparian Vegetation and Water Surface 67.5 inches can be compared to tomatoes 33.8 inches and alfalfa 46.0 inches. The increased freshwater loss is from 33.7 inches when compared to tomatoes and 21.5 when compared to alfalfa. The increased loss of fresh water is particularly significant in drier years.

LO1-8  
cont.

**Core Strategy 4 Should be amended as follows:**

*Core Strategy 4: Protect Native Species and Reduce the Impact of Nonnative Invasive Species*

*Because Large Scale Ecosystem restoration has the potential to create vacant niche space and opportunity for further invasion, restoration efforts should be properly monitored and managed to reduce such threats to the ecosystem. The Council supports adaptive management strategies that expand the diversity of hatchery practices to support native Salmonids and their genomics without negatively impacting other native fish species or exacerbating the expansion or proliferation of other nonnative invasive species.*

LO1-9

Changes to the Delta landscape ultimately affect the hydrology of the Delta. Because the Delta is a tidal estuary, removal or degradation of levees to create habitat will cause a resulting increase in the Tidal Prism. Changes in the tidal prism affect the residence time of pollutants and salinity intrusion. An increased tidal prism will result in increased residence time of pollutants and an increase in salinity intrusion which will lead to further degradation of in-delta water quality. Indeed, more open water in shallow areas will warm and evaporate at a much greater rate than water in the currently configured Delta channels.

Invasive Plant and animal species alike threaten the health of the ecosystem. Land based restoration efforts are likely to create opportunities for the establishment of invasive plant species. Likewise, tidal restoration opens the door to the threat of further proliferation of nonnative invasive aquatic plants. Chemical treatment of these plants in-situ is likely to have a deleterious effect on the functionality of the habitat itself, further the spread of the invasive aquatic plants, or provide a foothold for continued occupation of the Delta.

There are significant adverse impacts to fish from increases in methyl mercury concentration from the creation of the habitat which is intended to be beneficial to fish. Improvement of Delta water quality and flow with reduction of exports so as to provide sufficient conditions to protect fish would avoid the need for habitat measures which increase methyl mercury.

Toxic algal blooms and microcystis are already a significant health hazard in the Delta to recreational users, animals, and even fish. The Delta is a source of drinking water for export and local users and the possibility of transmission of toxins is real. The degradation of Delta water quality will substantially increase the health risk from such algal blooms. Cumulative impacts with likely future projects and actions will greatly increase the adverse impacts. The proposed single tunnel alone will remove substantial quantities of the good quality Sacramento River water from passing through the interior of the Delta. This will reduce velocities in some areas and increase residence time. Elimination of the flushing action and dilution from the cross-delta flow and outflow will increase residence time in many locations and increase the concentration of constituents contributing to algal blooms. Water temperature and clarity increases could also result. Further investigation and implementation of operational measures to manage residence time is clearly not a good faith effort to fully consider all reasonable alternatives. The most obvious of which is to eliminate isolated conveyance, provide adequate flushing flows and export only water that is truly surplus.

The Microcystis effects from habitat development could certainly be mitigated by eliminating those projects which create the problem. The impacts to fish which habitat development is intended to mitigate can be greatly mitigated with water flow and other measures including the reduction of export of water that is not truly surplus and sensitivity as to when to run the export pumps.

#### **THE DRAFT PRIORITY AREAS FOR EXPANSION OF FLOODPLAINS IN THE SOUTH DELTA SHOULD BE DELETED EXCEPT AS TO PARADISE CUT.**

The designated areas of Middle and Upper Roberts Island, Union Island, Fabian Tract and portions of the Pescadero District south of Paradise Cut are intensively farmed and within the primary zone of the Delta. These areas are a significant part of agriculture in San Joaquin County and are highly productive. Periodic flooding of such areas or conversion to habitat would clearly not protect and enhance the unique cultural and agricultural values of the Delta. Such areas are also projected to become tidal with the projected sea level rise and climate change.

LO1-9  
cont.

LO1-10

The areas protected by urban levees downstream from the Stanislaus River should not be considered for expansion of the floodplain. The proximity to Urban Development and high groundwater table will likely result in significant damage to urban improvements and cause significant health and safety issues. For much of the area land use is restricted to agriculture which currently is highly productive.

Existing levees in the Delta constitute an interrelated system necessary for the protection of the entire area including evacuation of the entire region in the event of an emergency whether it be from flooding, earthquake, terrorist attack or otherwise. With Climate change, sea level rise and the desire to increase flood protection for populations and critical infrastructure, improvement of existing Delta Levees should be encouraged and not burdened with floodplain restoration concepts.

The San Joaquin River suffers from degraded water quality due to upstream diversions and lack of a valley drain connected to the ocean, originally contemplated to discharge toxic runoff. Detrimental concentrations of selenium place fish and waterfowl at greater risk and slowing the outmigration of fish through the lower portion of the river and particularly in the Delta is unwise. The impact of increased inundated areas during the waterfowl nesting season will increase the risk of deformities due to selenium (see exhibit 34). As the tidal zone increases areas not protected by levees will be increasingly inundated.

Unless revised the proposed amendments are very detrimental to the Delta and unlikely to achieve real benefit to fish and wildlife.



LO1-10  
cont.



LO1-11



LO1-12

Yours very truly,

Brett Baker  
Attorney for the Central Delta Water Agency

## **L01 Central Delta Water Agency**

### **Responses to Comments from L01 Central Delta Water Agency**

#### **L01-1:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

The comment refers to Core Strategy 4.1 (Create More Natural Functional Flows) of the proposed Ecosystem Amendment, and states that the amount of water exported must be limited to water that is surplus to that needed to support present and future needs within the Delta watershed. The resource sections in Draft PEIR Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, include the evaluation of impacts that would result from implementation of actions by other entities in response to the Proposed Project. Once specific projects are proposed by entities in response to the proposed Ecosystem Amendment, their impacts will be more fully evaluated in future project-level CEQA documents by the lead agencies for the proposed projects.

Specific to water supply, as described under Impact 5.18-2 on page 5.18-29 of the Draft PEIR, impacts were determined to be less than significant. Certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes. However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta, fish and wildlife, functioning critical habitat, or to groundwater sustainability. In addition, operation of projects is not anticipated to require extensive staffing with increased water demands and operational activities that required water and could be met by existing municipal and non-municipal systems.

#### **L01-2:**

This comment addresses Cal. Code Regs. title 23, section 5001(dd)(3) which was amended in 2016 to exempt single-year water transfers from the regulatory definition of “Covered Action” and is not part of the proposed Ecosystem Amendment. Therefore, no change to this regulatory section is proposed.

#### **L01-3:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, including development of Core Strategy 2. Core Strategy 2 expands upon one of the Proposed Project objectives, to “implement large-scale restoration projects that restore ecosystem function, increase resilience to climate change, are compatible with adjacent land uses, and that support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place.” Core Strategy 2 was informed by best available science related to, among other areas, the topics raised in this comment.

**LO1-4:**

This comment addresses the proposed amendment and the strategies for achieving the coequal goals. It does not address the adequacy or content of the Draft PEIR. The comment also references the proposed Delta Conveyance project which is proposed by another State agency, (DWR), and is not part of the project being evaluated in this Draft PEIR. As the CEQA lead agency, DWR issued a NOP for the Delta Conveyance project on January 15, 2020, and held scoping meetings throughout the State. Draft PEIR Chapter 7, *Cumulative Impacts*, includes consideration of the Delta Conveyance Project (see Table 7-2 on page 7-5) in the cumulative impact analysis for the Proposed Project.

See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, which is the project description of the Proposed Project analyzed in the Draft PEIR.

Through DLIS, the Council is updating priorities for State investments in the Delta levee system to reduce the likelihood and consequences of levee failures, to protect people, property, and state interests, while advancing the coequal goals of improving water supply reliability, restoring the Delta ecosystem, and protecting and enhancing the values of the Delta as an evolving place. At its August 2021 meeting, the Council reviewed and approved an update to DLIS based on new elevation information, approved an addendum to the PEIR for the Delta Plan Amendments, and authorized staff to initiate rulemaking under the Administrative Procedures Act. The environmental effects of flooding agricultural land due to ecosystem restoration projects encouraged by the proposed Ecosystem Amendment are discussed in Section 5.3, *Agriculture and Forestry Resources*, of the Draft PEIR.

**LO1-5:**

This comment addresses the prioritization of funding of levee improvements. This comment also addresses the proposed amendment. It does not address the adequacy or content of the Draft PEIR.

See response LO1-4 for a discussion of The Council's ongoing efforts on DLIS.

**LO1-6:**

This comment addresses emergency response during flood events and other emergencies which is not part of the Proposed Project. It does not address the adequacy or content of the Draft PEIR. No further response is required.

**LO1-7:**

This comment addresses prioritizing funding of levees to address sea level rise and the integration of funding for habitat and levee improvements. It does not address the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, which is the project description of the Proposed Project analyzed in the Draft PEIR.

See response LO1-4 for a discussion of the Council's ongoing efforts on DLIS.

**LO1-8:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, including development of Core Strategy 3. Core Strategy 3 expands upon one of the PEIR project objectives, to “protect opportunities to restore ecosystems and safeguard against land loss by taking sea level rise and long-term flood risk into consideration; protecting land from development; reducing, halting, or reversing subsidence; and incentivizing agricultural land management practices that support native wildlife and counter subsidence.” Core Strategy 3 was informed by best available science related to, among other areas, the topics raised in this comment.

**LO1-9:**

This comment addresses impacts resulting from land-based restoration efforts related to the introduction of invasive species, and adverse effects to fisheries associated with changes in water quality. The Draft PEIR addresses invasive aquatic vegetation. As described in Chapter 4, projects that could be implemented by other entities in response to the proposed Ecosystem Amendment include those that would remove invasive aquatic vegetation, and are, therefore, unlikely to introduce invasive species (see Table 4-2 and the discussion page 4-19). In addition, the Draft PEIR includes Revised Mitigation Measure 4-1(e) that requires the development and implementation of an invasive species management plan for any project whose construction or operation could lead to the introduction or facilitation of invasive plant species. Revised Mitigation Measure 4-1(e), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, would apply to covered actions as required by Delta Plan policy G P1(b)(2), and would be recommended for non-covered actions.

Delta Plan Policy ER P5 will continue to require covered actions to demonstrate that they 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. ER P5 is unchanged by the Proposed Project.

Impacts to fisheries and water quality that would result from implementation of actions by other entities in response to the Proposed Project are evaluated in the Draft PEIR (see Section 5.5, *Biological Resources – Aquatic*, and Section 5.11, *Hydrology and Water Quality*). Once specific projects are proposed by entities in response to the proposed Ecosystem Amendment, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

The comment also describes concerns associated with proposed Delta conveyance facilities. See response LO1-4.

The comment also addresses the proposed amendment. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, including development of Core Strategy 4. Core Strategy 4 expands upon one of the

PEIR project objectives, to “prevent introduction of non-native invasive species; manage non-native invasive species impacts; and improve fish management to support the reproductive success and survival of native fish.” Core Strategy 4 was informed by best available science related to, among other areas, the topics raised in this comment.

**LO1-10:**

This comment recommends changes to the draft priority areas for the expansion of floodplains proposed as part of amendments to Delta Plan Policy ER P4. It addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, including development of proposed amendments to ER P4.

**LO1-11:**

This comment addresses the proposed amendment and concerns over water quality in the San Joaquin River. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment, which is the project description of the Proposed Project analyzed in the Draft PEIR.

Draft PEIR Section 5.11.2 Environmental Setting within Section 5.11, *Hydrology and Water Quality*, discusses selenium within the Primary Planning Area (see Draft PEIR pages 5.11-14 through 5.11-16) and in the Extended Planning Area in the Sacramento River Watershed (see Draft PEIR pages 5.11-40 and 5.11-49 through 5.11-50) and the San Joaquin River Watershed (see Draft PEIR page 5.11-54).

Section 5.11 also analyzes potential impacts to water supply and water quality that could occur as a result of implementing the Proposed Project. Specifically, Draft PEIR Impact 5.11-1 discusses potential water quality impacts of constructed facilities and operations of the proposed Ecosystem Amendment (see Draft PEIR pages 5.11-131 through 5.11-133). Once specific projects are proposed by entities in response to the proposed Ecosystem Amendment, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

**LO1-12:**

This comment is noted and will be forwarded to the Council for their consideration. See responses LO1-1 through LO-11.





### Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County  
*"Working together on water and Delta issues"*

November 12, 2021

Harriet Ross, Assistant Planning Director  
 Delta Stewardship Council

Sent via email: [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

**Re: Comments on Appendix C: Text of Proposed Delta Plan Ecosystem Amendment  
 (Chapter 4) Pertaining to Good Neighbor Checklist**

Dear Ms. Ross,

The Sacramento-San Joaquin Delta Counties Coalition (DCC) is formed to speak with one voice on the health of the Sacramento-San Joaquin Delta. These comments pertain to the inclusion of the new "Ecosystem Restoration Recommendation 'B' Good Neighbor Checklist" in the Chapter 4 revisions.<sup>1</sup> DCC staff worked with Delta Protection Commission, Delta Conservancy and the Department of Water Resources (DWR) staff to update the checklist previously prepared by DWR as part of its Agriculture and Land Stewardship Framework, and appreciates the inclusion of that document in the updated text of Chapter 4. With so many acres of various types of restoration proposed in the Delta, it is essential that these projects be planned in coordination with local agencies and landowners.

DCC has the following minor suggestions to improve the consistency of the references within revised Chapter 4:

- Chapter 4 revisions correctly include the Good Neighbor checklist language that DCC helped draft with the entities mentioned above (pdf pp. 244-247). On pdf page 246, however, there is a reference to the office that transmitted these materials to DSC. This extraneous information should be omitted.
- The Performance Measure language at pdf page 451 should simply refer to the Good Neighbor Checklist, without reference to DWR, since it is now a jointly created document.

LO2-1

LO2-2

Thank you for considering these comments. If you have any questions, please contact us through our coordinator, Natasha Drane, at 916-874-4627 or [dranen@saccounty.net](mailto:dranen@saccounty.net).

Sincerely,

Patrick Kennedy, Supervisor  
 Sacramento County

Mitch Mashburn, Supervisor  
 Solano County

Karen Mitchoff, Supervisor  
 Contra Costa County

Oscar Villegas, Supervisor Yolo  
 County

Chuck Winn, Supervisor  
 San Joaquin County

<sup>1</sup> Available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2021-09-27-draft-peir-eco-amendment-appendix-c-proposed-eco-amendment.pdf>.

**LO2 Delta Counties Coalition (Contra Costa, Sacramento, San Joaquin, Solano, Yolo)**

**Responses to Comments from LO2 Delta Counties Coalition (Contra Costa, Sacramento, San Joaquin, Solano, Yolo)**

**LO2-1:**

This comment addresses the proposed Ecosystem Amendment and the Delta Plan, and not the adequacy or content of the Draft PEIR. The comment also requests a correction to the reference to the office that transmitted specific materials to the Council, as described in the Draft PEIR (see page C-3.4 3 of Draft PEIR Appendix C, Text of Proposed Delta Plan Ecosystem Amendment). This change has been made and is included in Appendix A of the Final PEIR.

**LO2-2:**

This comment addresses the proposed amendment and the Delta Plan, and not the adequacy or content of the Draft PEIR. This comment addresses how the Good Neighbor Checklist is described in the Proposed Amendment at page C-4.3 25, and that it was a jointly created document. A change has been made to remove attribution to “DWR” and is included in Appendix A of the Final PEIR.



November 24, 2021

Harriet Lai Ross  
Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814  
Email Address: [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

**VIA EMAIL**

Subject: Comments – Delta Plan Ecosystem Amendment Draft PEIR

Dear Ms. Ross:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to provide comments on the Delta Plan Ecosystem Amendment Draft PEIR. As stewards of the Mokelumne River, EBMUD has worked with multiple partners on a myriad of restoration projects to enhance the river ecosystem and improve long-term sustainability of ecosystem functions.

EBMUD has conducted habitat restoration in the lower Mokelumne River for nearly three decades. From 1990 to 2019, over \$1.8 million was invested on the lower Mokelumne River to support gravel enhancement, gravel replenishment, and the development of side channels and floodplains to improve habitat complexity and promote healthy salmonid populations. The Mokelumne River habitat restoration program is recognized as one of the most effective in the Central Valley, and our continued legacy of amplified actions is vital to provide key adaptations for climate change.

Additionally, EBMUD has supported key projects and programs within the Delta that improve resiliency of both infrastructure and habitats. The Mokelumne Aqueduct is the water supply conduit for 1.4 million people throughout the East Bay region. In 2004 the aqueduct was threatened by the Jones Tract levee failure. EBMUD assisted in gaining support for levee improvement funding throughout the region to better protect land and infrastructure. However, as it sits the Mokelumne Aqueduct is vulnerable to an array of ongoing issues including subsidence, sea level rise, and earthquakes. To improve the resiliency of the aqueduct, significant work will need to occur in the near future.

Restoring floodplain and shallow water habitats within the Delta is key to maintaining and recovering aquatic species. EBMUD supports key projects including the McCormack Williamson Tract Restoration Project being led by the California Department of Water

LO3-1

Ms. Harriet Lai Ross  
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Resources. This project will provide a substantial increase to floodplain habitat for the Mokelumne and Consumnes rivers. Moreover, it provides a vital linkage between the improvements made within the tributary and outcomes within the Delta and ocean fisheries.

↑ LO3-1  
cont.

EBMUD's comments for the Delta Plan Ecosystem Amendment Draft PEIR are as follows:

- The statement "The Mokelumne River is a major tributary to the Delta" is made no fewer than three times in this PEIR (Line 24, P 5.5-29; Line 22, P 5.6-51; Line 44, P 5.11-47). No other tributary is highlighted as being a "major tributary to the Delta." The characterization of the Mokelumne River as a major tributary to the Delta is inaccurate, certainly relative to the flow contributions of the truly "major" tributaries to the Delta. The average Mokelumne River unimpaired inflow to the Delta represented 2.5 percent of the average total Delta inflow for the period between 1997 and 2014. The PEIR text itself indicates that "Inflows to the Delta occur primarily from the Sacramento River system, with some flows originating in the Yolo Bypass, the San Joaquin River, and other eastside tributaries such as the Mokelumne, Calaveras, and Cosumnes rivers. In an above-normal year, nearly 85 percent of the total Delta inflow comes from the Sacramento River, more than 10 percent comes from the San Joaquin River, and the rest comes from the three eastside streams (DWR 2019b:7)." (P 5.11-9) The Mokelumne River may be a major tributary to the Delta in terms of its ecological contributions to the salmon fishery, but clearly not by volume of flow into the Delta. Please remove this inaccurate characterization of the Mokelumne River from the draft PEIR in all three instances.
- Please update your reference to EBMUD's service population to "approximately 1.4 million people" instead of "almost 1.3 million people." (Line 3, P 5.11-63)
- Please replace the paragraph describing EBMUD and East San Joaquin Parties' conjunctive use and groundwater banking project (Lines 34-41, P 5.11-63) with the following updated information from EBMUD's 2020 Urban Water Management Plan: *Groundwater banking efforts are underway in Eastern San Joaquin County with the Demonstration Recharge Extraction and Aquifer Management (DREAM) Pilot Project. Pending further evaluation of the results of the DREAM Pilot Project, EBMUD, North San Joaquin Water Conservation District (NSJCWCD), San Joaquin County, and the Eastern Water Alliance may pursue a larger, longer term groundwater banking project. The DREAM Pilot Project provides NSJCWCD with up to 1,000 AF of EBMUD surface water from the Mokelumne River that participating landowners use for irrigation in lieu of pumping groundwater from the Eastern San Joaquin Subbasin; thereby, storing groundwater for future use. During dry years, EBMUD can recover up to half of the banked groundwater for use within its service area.*
- Please modify the reference to a groundwater banking project between City of Napa and EBMUD to "investigated" or delete, as the information is outdated. (Line 29, 5.11-81)

LO3-2

LO3-3

LO3-4

LO3-5

Ms. Harriet Lai Ross  
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Sincerely,

A handwritten signature in black ink, appearing to be 'JDS', with a long horizontal flourish extending to the right.

Jose D. Setka  
Environmental Affairs Officer

JDS:IHH

### ***LO3 East Bay Municipal Utilities District***

#### **Responses to Comments from LO3 East Bay Municipal Utilities District**

##### **LO3-1:**

This comment presents background information on the East Bay Municipal Utilities District (EBMUD) and its support of restoration projects in the lower Mokelumne River and in the Delta.

##### **LO3-2:**

The fifth paragraph on page 5.5-29 is revised as follows:

The Mokelumne River is a ~~major~~ tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. Runoff in the watershed is captured in three major impoundments (Camanche, Pardee, and Salt Springs reservoirs). ...

The fourth paragraph on page 5.6-51 is revised as follows:

The Mokelumne River is a ~~major~~ tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. The variety of riparian habitats along the Mokelumne River supports numerous bird species. ...

The fourth paragraph on page 5.11-47 is revised as follows:

The Mokelumne River originates in the Sierra Nevada and drains a watershed of approximately 661 square miles. It is a ~~major~~ tributary to the Delta, entering the lower San Joaquin River northwest of Stockton. ...

##### **LO3-3:**

The first paragraph on page 5.11-63 is revised as follows:

... This water goes to Alameda and Contra Costa counties in the East Bay. The Mokelumne River supplies more than 90 percent of the water supply to the EBMUD, serving ~~almost 1.3 million people~~ approximately 1.4 million people. The SFPUC and other nearby cities receive water through the Hetch Hetchy Aqueduct from the Tuolumne River in Yosemite.

##### **LO3-4:**

The fifth paragraph on page 5.11-63 is revised as follows:

~~A joint conjunctive use and groundwater banking project was evaluated by the East San Joaquin Parties Water Authority and the EBMUD, named the Mokelumne Aquifer Recharge and Storage Project (Northeastern San Joaquin County GBA 2004:34). The goal was to store surface water underground in wet years, and in dry years, the EBMUD would be allowed to extract and export the recovered water supply (Northeastern San Joaquin County GBA 2004:34). Several studies have concluded that the test area is suitable for recharge and recovery of groundwater. However, more testing needs to be done to further evaluate the feasibility of this project. Groundwater banking efforts are underway in Eastern San Joaquin County with the Demonstration Recharge Extraction and~~

Aquifer Management (DREAM) Pilot Project. Pending further evaluation of the results of the DREAM Pilot Project, EBMUD, North San Joaquin Water Conservation District (NSJCWCD), San Joaquin County, and the Eastern Water Alliance may pursue a larger, longer term groundwater banking project. The DREAM Pilot Project provides NSJCWCD with up to 1,000 AF of EBMUD surface water from the Mokelumne River that participating landowners use for irrigation in lieu of pumping groundwater from the Eastern San Joaquin Subbasin; thereby, storing groundwater for future use. During dry years, EBMUD can recover up to half of the banked groundwater for use within its service area.

**LO3-5:**

The fifth paragraph on page 5.11-81 is revised as follows:

The ACWD, SCVWD, and Zone 7 Water Agency currently have groundwater banking programs. ~~The EBMUD and the City of Napa are investigating opportunities for groundwater banking.~~



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November 30, 2021

Harriet Ross (**VIA EMAIL:** [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov))  
Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

**RE: Comments on Delta Plan Ecosystem Amendment and PEIR**

Dear Ms. Ross:

Local Agencies of the North Delta (“LAND”)<sup>1</sup> provides these additional comments on the Chapter Four of the Delta Plan and comments on the Draft Program Environmental Impact Report (“PEIR”). LAND appreciates the Delta Stewardship Council’s (“DSC”) consideration of the previous comments that were offered prior to the release of the Draft PEIR. There was, however, significant difficulty navigating the documents provided for review; we recommend compiling the entire proposed Chapter 4 Amendments package (including appendices) into one place so that the public can more easily understand the proposed project and its likely effects.

LO4-1

**1. Comments on Delta Plan Chapter 4 Amendments (2021)**

***Modified Text in Response to Comments***

LAND appreciates that DSC has made certain revisions that appear to respond to our January 20, 2020 comment letter.

**New ER Recommendation “B” – Use Good Neighbor Checklist to Coordinate Restoration with Adjacent Uses (Appendix C, p. 1.3.6)**

LO4-2

DSC’s inclusion of the updated Good Neighbor checklist that LAND encouraged in its previously comment letter is appreciated. Moving forward, we would welcome the

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<sup>1</sup> LAND is a coalition comprised of reclamation, water and levee maintenance districts covering about 100,000 acres in the northern geographic area of the Delta. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.



opportunity to discuss what Good Neighbor means for restoration projects and how to ensure that the checklist is used effectively to ensure well-planned restoration project.

↑ LO4-2  
| cont.

### ***Concerns with Unaddressed Comments***

LAND is disappointed in DSC's failure to make revisions responsive to LAND's comprehensive suggestions in its January 2020 letter. We did not find a rationale for overlooking these suggestions; if such information was contained within the documents provided for review, it was very difficult to locate. LAND requests that the DSC reconsider LAND's previously submitted comments, and provide an explanation as to why they were not addressed. These outstanding concerns are summarized below.

#### Figure 4-2. Simulation of Restored Future Delta Landscape (Chapter 4 [2020], p. 4-25)

Figure 4-2 does not appear to have been modified in the 2021 changes to Chapter 4. This figure purports to illustrate what a restored Delta landscape might look like. However, as previously explained, this depiction is not historically accurate. Levees within the Delta were typically built on the natural high ground, and developed from overbank sediment deposits; these would be the only areas historically with dense trees in the Delta. Historically, there would not have been broad floodplains in the conventional sense; rather, there would be large areas of tidal freshwater emergent wetland.<sup>2</sup>

LO4-3

This figure implies a historic ecosystem that did not exist in the Delta. Nonetheless, the illustration remains from the 2020 draft, apparently without any substantive changes to the text. For readers of Delta Plan Chapter 4, observing this illustration may prompt the incorrect assumption that this type of landscape is replicable, when it is neither replicable today, nor indicative of how a restored Delta landscape might have looked. Placing setback levees in most locations in the Delta is not feasible and also would run counter to protecting existing Delta land uses dedicated to agriculture and Legacy communities. If used at all, Figure 4-2 should be placed in context and its limited applicability to the Delta of today should be described.

#### Core Strategy 2: Restore Ecosystem Function (Chapter 4 [2020], p. 4-31)

The DSC is correct that "There are limited locations in the Delta where land use, land elevation, and primary fish migration corridors are conducive to physically expand floodplains." (Chapter 4 [2020], p. 4-31.) Nonetheless, Delta Plan Chapter 4 continues to include proposed policies and recommendations that overstate the feasibility of

LO4-4

<sup>2</sup> See, e.g., SFEI Sacramento-San Joaquin Delta Historical Ecology Study (2012), available at: <http://www.sfei.org/DeltaHEStudy>.

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expanding floodplains in the Delta, despite recognizing their limited applicability. (See, e.g., ER P4, discussed below.)

↑ LO4-4  
cont.

Core Strategy 3: Protect Land for Restoration and Safeguard Against Land Loss (Chapter 4 [2020], p. 4-33, Appendix C, pp. C-1.3 8 to C-1.3 9)

Prior LAND comments pointed to the need to prioritize state-owned lands for subsidence reversal activities and that deeply subsided areas that require longer timelines to reach intertidal elevation should still be covered by PM 4.12. (See Appendix C, p. C-4.3 22.) LAND also suggested that additional methods for subsidence reversal should also be considered beyond rice cultivation, managed wetlands, and tidal marsh restoration. Text modifications in response to these comments were not located.

Additional subsidence reversal actions include those promoted by the Healthy Soils Program should be mentioned. This program provides incentives for agricultural producers to implement greenhouse gas-reducing soil health practices. Including, and incentivizing, additional recommended subsidence reversal activities such as these would increase the likelihood of reaching PM 4.12's goal.<sup>3</sup> With methane emissions presenting an unresolved concern (see PEIR comments below), planting riparian forests should also be considered.<sup>4</sup> Both natural cottonwood regeneration and marsh restoration techniques could yield significant GHG benefits.<sup>5</sup> Particularly, the areas just inside of the levees may be suitable for such plantings in a strip, which could also be compatible with flood protection.

LO4-5

There is also no explanation of how actions promoted by the DSC to address subsidence relate to the DSC's Delta Levee Investment Strategy ("DLIS"). The only reference to DLIS is how the PM 4.12 data sheet refers to its priority subsidence reversal locations. In addition, the relationship of PM 4.12 to PM 5.2 (target of 30,000 acres of subsidence reversal and carbon sequestration in Delta by 2030) should be explained in further detail.

<sup>3</sup> Draft Water Resiliency Proposal 16.1, available at: <http://waterresilience.ca.gov/wp-content/uploads/2020/01/California-Water-Resilience-Portfolio-2019-Final2.pdf>.

<sup>4</sup> See Water Code section 12987, subdivision (b) [allowing for easement acquisitions along levees for control and reversal of subsidence].

<sup>5</sup> Available at: <https://americancarbonregistry.org/carbon-accounting/standards-methodologies/restoration-of-california-deltaic-and-coastal-wetlands/ca-wetland-methodology-v1.1-November-2017.pdf>.

LAND concerns regarding the use of Figure 4-5 Elevation Bands for the Protection, Restoration, and Enhancement of Different Classes of Natural Communities (Chapter 4, p. 4-43) also appear to remain unaddressed. Figure 4-5 is without regard to the Delta levee system as well as the DSC's own DLIS. It should not be assumed that restoration is appropriate in these areas; for instance, the shallow subtidal areas shown in cyan are largely private property in productive agricultural use that are protected by levees. If restoration projects are proposed in these areas, any actions to accommodate marsh migration, for instance, would also likely have very negative impacts on surrounding agricultural uses.

LO4-6

Figure 4-4. Priority Locations to Evaluate Physical Expansion of Floodplains and Revisions to ER P4 (Appendix C-1.2 3 to C-1.2 4)

While some changes have been made to the ER P4 language, it is unclear what is meant to "evaluate and, where feasible, incorporate alternatives" in revised ER P4(a)(1) means. The revised language also is confusing, and may delay necessary flood control projects. Figure 1. Priority Locations to Evaluate Physical Expansion of Floodplains (Appendix C, p. 8A-1) also continues to designate the mainstem of the Sacramento River for consideration of floodplain expansion, which is facially infeasible and likely to increase flood risk to vulnerable communities.

LO4-7

Moreover, since such setbacks are so cost prohibitive (especially if private lands must be purchased), these additional analyses are not likely to lead to the setbacks DSC appears to want to promote. Thus, the purpose of this additional analysis (and expense) for flood protection projects is unclear. Furthermore, the language in Chapter 4 still does not explain the relationship between DLIS and the policy language of ER P4. For instance, DLIS identifies some of these same levees shown in Appendix C, p. 8A-1 as high priority. Further clarification should be provided on how these Delta Plan policies would interact with one another and meet Delta Reform Act requirements.

Figure 4-7. Priority Habitat Restoration Areas (Chapter 4 [2020], p. 4-48)

It is unclear whether Figure 4-7 of Chapter 4 still shows a restoration priority area within the boundaries of the Stone Lakes National Wildlife Refuge, the same as Delta Plan Chapter 4, Appendix 5. It does not appear that DSC has actively consulted with U.S. Fish & Wildlife regarding its adopted Management Plan for the Refuge, and its relationship to DSC's designation of areas within and adjacent to it as a Priority Habitat Restoration Area. To continue to include areas within DSC's maps without reference to an adopted Management Plan does not respect existing land uses or the public investment in federal wildlife refuges. LAND requests clarification as to DSC's communication with U.S. Fish and Wildlife Service to ensure that Chapter 4 recommendations are

LO4-8

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consistent with existing land uses and the Management Plan for the Refuge, which is primarily focused on migratory bird habitat and related uses.

↑ LO4-8  
cont.

Core Strategy 3, ER P2, Appendix C-1.3-8

Provision (c) of ER P2 is helpful, which requires a certification of consistency to explain how the design will safeguard against levee failures for the life of the project. However, it is incorrect for restoration projects to assume, as they often do, that no ongoing maintenance will be required. It does not appear that DSC has addressed the previously stated concern regarding the need for ongoing maintenance at restoration projects upon completion of construction. This issue is also relevant to the environmental analysis in the PEIR.

LO4-9

*Significant Invasive Weed Growth Impacts from Restoration*

While there is some mention of the flow impacts to aquatic ecosystems, the Draft PEIR fails to disclose the impacts of weed growth on total water supply. (See PEIR, pp. 5.5-4, 5.6-23.) Exotic invasive plant species can consume more water than naturally occurring species, impacting water available for agriculture. (See Exhibit 1, Pitcairn et al., Yellow Starthistle continues its spread in California [2006]).

Water hyacinth is also a well-documented Delta invasive plant that uses a considerable amount of water which is lost to the atmosphere due to transpiration. Weeds in arid regions compete for water with native plant or commodity crops, and the weeds can also compete for nutrients, and diminish crop values. (See Exhibit 2, Abouziena et al., Water loss by weeds: a review (2014) 7 Int. Journal of ChemTech Research 1, pp. 323-336.) Aquatic weeds cause water loss in canals due to extensive root systems and high transpiration rates, in addition to physically blocking the canals. (*Id.* at 326.)

LO4-10

Environmental impacts from weed proliferation are potentially significant to the Delta. (See Exhibit 3, Ali & Khedr, Estimation of water losses through evapotranspiration of aquatic weeds in the Nile River (2018) 32 Water Science, pp. 259-275.) For example, water loss through evapotranspiration from water hyacinth was 3.7 times that from open water. (Exhibit 4, Timmer & Weldon, Evapotranspiration and Pollution of Water by Water Hyacinth (1966).) Given the potential exacerbation of invasive weeds that comes with restoration projects, the potential impacts on water consumption must be disclosed and analyzed.

If DSC fails to adequately address invasive weeds that accompany restoration, proliferation of weeds would shift the burden onto adjacent landowners and districts.

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Performance Measure 4.13 [2020]: New ER Recommendation “H”, Appendix C, p. C-4.3 27)

Performance Measure 4.13 relates to Barriers to Migratory Fish Passage and points to removal of migration barriers and screening diversions. New ER Recommendation “H.” Prioritize Unscreened Diversions within the Delta states that “The California Department of Fish and Wildlife [“DFW”] should collect field data to inform prioritization of unscreened diversions within the Delta.”

As explained in our previous comment letter, PM 4.13 overstates the need for screening small diversions in the Delta, most of which are under 100 cubic feet per second (cfs). The language around this performance measure and the recommendation not appear to have been modified, although PM 4.13 appears to delegate to DFW the task of prioritization. The language in 4 should provide some context for the prioritization task, informed by research on the subject, which demonstrates that small diversions (below 250 cfs) are unlikely to entrap open water fish. (Nobriga, 2004.) The Final Ecosystem Restoration Program, Ecosystem Strategy for the Sacramento San Joaquin Delta (May 2014) cites this study and states that “small agricultural Delta agricultural diversions are likely to have a minor effect on pelagic (open water) fish, such as the [D]elta smelt.” (pp. 57-58.) As a result, larger diversions (such as those over 250 cfs), have been the focus for consideration of screening. Thus, Delta Plan Performance measures should also prioritize screening of diversions over 250 cfs, which would have the most potential to benefit target species.

LO4-11

## **2. Comments on Draft Program Environmental Impact Report (PEIR)**

### Agricultural Impacts (PEIR, Chapter 5.3)

LAND is concerned about the loss of agricultural productivity if the DSC goal of 82,340 acres or restoration of natural communities in the Primary Planning Area by 2050 is met. (See PEIR, p. 5.3-18.) As the Draft PEIR indicates, 66 percent of the Primary Planning Area is designated as Farmland or Other Agricultural Land. (PEIR, Table 5.3-1.) Even if complex coordination with stakeholders to improve and conserve farmlands is achieved, the project would still result in a net loss of prime farmland in the Delta. (*Ibid.*)

As the Draft PEIR indicates, implementation of the project would have significant and unavoidable impacts on Agriculture in both the Primary Planning Area and the Delta Watershed Planning Area. (See PEIR, Table 5.3-4.) These impacts make it all the more important that restoration be targeted first on publicly owned lands, and that proper planning and mitigation occur. In addition, as described above, the proliferation of

LO4-12

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invasive weeds on restoration project areas must be addressed through ongoing maintenance in the long-term.

↑ LO4-12  
cont.

#### Air Quality Impacts (PEIR, Chapter 5.4)

PM 5.2 aims to increase acres with subsidence reversal or carbon sequestration practices to 30,000 acres by January 1, 2030. (Appendix C, p. C-4.3 29.) As the Draft PEIR indicates, emissions associated with the operation of projects in response to the proposed Ecosystem Amendment could have significant and unavoidable impacts on air quality and greenhouse gas (“GHG”) emissions. (See PEIR, Table 5.4-8.) The PEIR, however, does not provide adequate consideration of emissions from carbon sequestration projects. In particular, methane emissions present an unresolved concern for carbon sequestration practices that involve conversion of farmland. The Draft PEIR briefly mentions that qualitative impacts associated with the proposed Ecosystem Amendment, but does not go into further detail. (See PEIR, p. 5.4-31.) The PEIR also appears to assume that carbon sequestration projects would necessarily reduce GHG emissions. (See PEIR, pp. 5.4-55, 5.4-56, 5.4-59, 5.4-60.)

A recent study funded by the DFW and USDA provides important information about emissions from carbon sequestration projects that convert farmland. (See Exhibit 5, Hemes et al., Assessing the Carbon and Climate Benefit of Restoring Degraded Agricultural Peat Soils to Managed Wetlands (2019).) The Hemes study synthesized 36 years of continuous carbon dioxide and methane flux data from eddy covariance towers in the Sacramento and San Joaquin Delta to compute carbon and GHG budgets on drained, agricultural land compared to restored deltaic wetlands. The study considered 10 sites located on Twitchell, Sherman, and Bouldin Islands, composed of four restored wetlands [Sherman wetland, East End wetland, Mayberry wetland, West Pond wetland] and six agricultural sites [Twitchell rice, Sherman pasture, Twitchell corn, Bouldin corn, Twitchell alfalfa, Bouldin alfalfa].

LO4-13

The Hemes report explains that “Restoring degraded peat soils presents an attractive, but largely untested, climate change mitigation approach.” While eventual reduction of carbon emissions from the Delta could potentially be a co-benefit of projects that may slowly help reverse subsidence in the region, wetland sites are among the highest methane emitters around the world. Thus, there are still significant questions about the costs and benefits of this approach, and it is not clear that wholesale conversions of farmland to wetlands is a panacea for GHG emissions.

Research suggests that restoration alone should not be regarded as an immediate cure for halting carbon emissions. The Hemes study found that restored Delta wetlands do effectively remove carbon dioxide from the atmosphere, but due to increases in



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methane from wetland conversion “restored wetlands will not begin to accrue GHG benefits for at least a half century and become net sinks from the atmosphere after a century or more.”<sup>6</sup> Increasing the acres of land with subsidence reversal or carbon sequestration practices to 30,000 acres by January 1, 2030 could lead to significant GHG emissions for the first fifty years. The PEIR should disclose this potential impact and the applicable timeframes for different types of expected emissions, rather than assuming that carbon sequestration projects would reduce GHG emissions.

↑  
LO4-13  
cont.

\* \* \*

Thank you for considering these comments and please feel free to contact me with any questions or to discuss the issues raised herein.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:   
Osha R. Meserve

ORM

#### Attachments

Exhibit 1 - Pitcairn, et al, Yellow starthistle continues its spread in California

Exhibit 2 - Abouziena et al., Water loss by weeds: a review (2014) 7 Int. Journal of ChemTech Research 1, pp. 323-336

Exhibit 3 - Ali & Khedr, Estimation of water losses through evapotranspiration of aquatic weeds in the Nile River (2018)

Exhibit 4, Timmer & Weldon, Evapotranspiration and Pollution of Water by Water Hyacinth (1966)

Exhibit 5 - Hemes, Assessing the Carbon and Climate Benefit of Restoring Degraded Agricultural Peat Soils to Managed Wetlands (2019)

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<sup>6</sup> Hemes, p. 212.

## **LO4 Local Agencies of the North Delta**

### **Responses to Comments from LO4 Local Agencies of the North Delta**

#### **LO4-1:**

Appendix C: *Text of Proposed Delta Plan Ecosystem Amendment* of the Draft PEIR includes the following information that was available for review during the public review period:

- ♦ An updated Chapter 4 narrative, including new and revised policies and recommendations, and removed recommendations (see Attachment C-1. Proposed Delta Plan Chapter 4, Protect, Restore and Enhance the Delta Ecosystem);
- ♦ Three regulatory appendices (Delta Plan Appendices 3A and 4A including new definitions; and Delta Plan Appendix 8A) (see Attachment C-2. Regulatory Appendices);
- ♦ Four technical appendices (Delta Plan Appendix Q1-Q4) (see Attachment C-3. Technical Appendices); and
- ♦ An updated appendix containing new and revised ecosystem performance measures pertinent to the coequal goal of protecting, restoring, and enhancing the Delta ecosystem, and removed performance measures (see Attachment C-4. Performance Measures).

In addition, as described in Draft PEIR Chapter 1, *Introduction*, on page 1-7, the Draft PEIR, including Appendix C, is available on the Council's website.

#### **LO4-2:**

This comment is noted and will be forwarded to the Council for consideration.

#### **LO4-3:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment. The Council considered the comment regarding Figure 4-2 (Draft PEIR, Appendix C, page 4-25), which is a visual simulation of a potential restored future Delta landscape. As noted in the caption, this figure is a simulation of a potential future restoration area. It does not imply that it represents the historical state of a location in the Delta. In addition, the figure does not address the feasibility of such a restoration action. Once specific projects are proposed in response to the proposed Ecosystem Amendment, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

#### **LO4-4:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed



Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**LO4-5:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment or information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

The DLIS is a separate project from the Ecosystem Amendment that is related to Chapter 7 of the Delta Plan. DLIS does not consider subsidence or subsidence reversal projects or programs in its prioritization. DLIS only considers current conditions. PM 4.12 is independent from the levee investment strategy. See also response LO4-13.

PM 4.12 sets targets for subsidence reversal activities to be located at shallow subtidal elevations to prevent net loss of future opportunities for tidal wetland restoration and prioritizes Delta islands with at least 50 percent of the area or at least 1,235 acres at shallow subtidal elevations islands. This 1,235-acre threshold is used in the Delta Plan to determine if a tidal wetland project is large-scale.

The comment suggests including methods in addition to managed wetlands, tidal marsh restoration, and rice cultivation as subsidence reversal activities. In developing PM 4.12, review of relevant scientific literature found no alternative methods that would provide long-term soil accretion at rates that could approach 4 centimeters per year (cm/yr), which is the target for PM 4.12. However, the PM would still track alternative subsidence reversal methods. PM 4.12 defines subsidence reversal as “a process that halts soil oxidation and accumulates new soil material in order to increase land elevations” (Draft PEIR Attachment C, page 487); therefore, alternative methods in addition to rice cultivation, managed wetlands, and tidal marsh restoration that meet that definition would also be tracked by the measure.

Any action supported by the Healthy Soils Program that meets the PM 4.12 definition of subsidence reversal would be tracked when located in the target locations at shallow subtidal elevations. Recommended activities like planting cottonwood riparian habitat on levees would not be tracked because these projects, while beneficial, are not being implemented on subsided land but rather on the levees protecting that land. However, any acreage in an easement with riparian habitat may have greenhouse gas (GHG) benefits that could make it appropriate to track under PM 5.2, which tracks all carbon sequestration actions as described below.

The Healthy Soils Program funds activities that have GHG reduction benefits. These activities, as implemented, would likely be tracked under PM 5.2, which tracks all carbon sequestration activity. The difference between PM 4.12 and PM 5.2 is that PM 5.2 tracks all landscape scale carbon sequestration actions. This includes subsidence reversal but may include any other land management practices designed to sequester carbon such as some of those in the Healthy Soils Program. Additionally, it tracks the entire landscape of the Delta and Suisun Marsh. PM 4.12 only tracks carbon sequestration that meets the definition of subsidence reversal, can achieve 4cm/yr of soil accretion, and is located on lands at intertidal elevations capable of supporting

wetland habitat restoration. A more detailed explanation of the difference between PM 4.12 and PM 5.2 is included in the PM 4.12 data sheet (Draft PEIR Appendix C, page 489-490).

**LO4-6:**

The comment states concern regarding the use of Figure 4-5 in the proposed Ecosystem Amendment. This is a comment on the Proposed Project. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

Restoration within the elevation bands referred to in this comment is part of the Proposed Project evaluated in the resource sections in Chapter 5 of the Draft PEIR. See Chapter 3, *Project Description*, on page 3-23 under 3.4.3 Core Strategy 3: Protect Land for Restoration and Safeguard Against Land Loss. Draft PEIR Appendix C states the methods for identifying elevation bands on pages 4-43 to 4-45, 4A-1, Q1-1 to Q1-5, Q1-12, Q1-16, Q1-23, and Q2-4 to Q2-7.

Figure 4-5 (Elevation Bands for the Protection, Restoration, and Enhancement of Different Classes of Natural Communities) of Chapter 4 of the Delta Plan is independent of DLIS. It depicts the different classes of natural communities according to the best available science concerning land subsidence, future sea level rise, and appropriate locations for protection, restoration, and enhancement actions. DLIS is based solely on existing conditions but would be updated in the future to address land conversions from agriculture to restored habitat that may occur within the proposed elevation bands. See response LO4-5 for a discussion of the Council's ongoing efforts on DLIS.

Draft PEIR Section 5.3, *Agriculture and Forestry Resources*, evaluates conversion of Farmland to nonagricultural uses that could occur as a result of the implementation of projects in response to the proposed Ecosystem Amendment. Revised Mitigation Measure 7-1(a) through (h) would minimize impacts associated with the conversion to nonagricultural uses of Farmland, land zoned for agriculture, and land subject to a Williamson Act contract. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed. Revised Mitigation Measure 7-1(a) through (h), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P 1(b)(2).

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

**LO4-7:**

The comment addresses the proposed amendment and not the adequacy of the Draft PEIR analyses. The revised description of priority areas where ER P4 would require covered actions to evaluate levee setback alternatives is included in Draft PEIR Appendix C, pages C-1.2.3 through C-1.2.4. Figure 1 (page 8A-1 of Appendix C) illustrates these areas on a map.

1 See Topical Response 1: Development and Purpose of the Proposed Ecosystem  
2 Amendment for information about the extensive process undertaken to develop the  
3 proposed Ecosystem Amendment. Proposed amendments to ER P4 are independent of  
4 DLIS. DLIS is based solely on existing conditions, which may rate a levee high priority  
5 based on its current configuration and the current assets it protects. Should the levee  
6 configuration or protected assets change, DLIS would be updated in the future to  
7 address these changed conditions.

8 **LO4-8:**

9 This comment addresses the proposed amendment and not the adequacy or content of  
10 the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed  
11 Ecosystem Amendment for information about the extensive process undertaken to  
12 develop the proposed Ecosystem Amendment.

13 The United States Department of the Interior, Fish and Wildlife Service (USFWS)  
14 manages the Stone Lakes National Wildlife Refuge. As the commentor notes, the Stone  
15 Lakes National Wildlife Refuge, which is located within the Delta, has a Comprehensive  
16 Conservation Plan with goals, objectives, and strategies for improving refuge conditions.  
17 The USFWS was actively involved in development of the proposed Ecosystem  
18 Amendment. The Council coordinated development of the Ecosystem Amendment  
19 through an interagency committee composed of federal and State agencies, including  
20 USFWS, and local partners. The interagency committee held four meetings, as well as  
21 several other outreach and listening sessions, over the course of development of the  
22 proposed Ecosystem Amendment. Representatives from the USFWS are also active  
23 participants in the Delta Plan Interagency Implementation Committee (DPIIC). The  
24 proposed Ecosystem Amendment was provided to DPIIC members and discussed at  
25 DPIIC meetings held September 26, 2018 and February 27, 2020. The proposed  
26 Ecosystem Amendment protects opportunities for restoration and supports  
27 implementation of the USFWS's Comprehensive Conservation Plan for Stone Lakes  
28 National Wildlife Refuge.

29 **LO4-9:**

30 This comment addresses the proposed amendment and not the adequacy or content of  
31 the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed  
32 Ecosystem Amendment for information about the extensive process undertaken to  
33 develop the proposed Ecosystem Amendment, including proposed amendments to  
34 ER P2. Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and*  
35 *Construction Methods that Could Result with Implementation of the Proposed*  
36 *Ecosystem Amendment*, includes the types of operation, maintenance and monitoring  
37 activities that may be necessary to support successful establishment of restored natural  
38 conditions (see page 4-29). As a result, the impact analysis for each of the resource  
39 sections in Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*,  
40 evaluates the potential impacts of operational and maintenance activities for projects  
41 implemented by other entities in response to the proposed Ecosystem Amendment.  
42 Project-level impacts would be addressed in future site-specific environmental analysis  
43 conducted by lead agencies at the time such facilities are proposed.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

**LO4-10:**

The Draft PEIR addresses invasive aquatic vegetation. As described in Chapter 4, projects that could be implemented by other entities in response to the proposed Ecosystem Amendment include those that would remove invasive aquatic vegetation, and is, therefore, unlikely to introduce invasive species (see Table 4-2 and the discussion page 4-19). In addition, the Draft PEIR includes Revised Mitigation Measure 4-1(e) that requires the development and implementation of an invasive species management plan for any project whose construction or operation could lead to the introduction or facilitation of invasive plant species. Revised Mitigation Measure 4-1(e), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P1(b)(2) and would be recommended for non-covered actions.

Delta Plan Policy ER P5 will continue to require covered actions to demonstrate that they 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. ER P5 is unchanged by the Proposed Project.

**LO4-11:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

The study referenced in the comment (Nobriga 2004) was considered in developing ER Recommendation “H” and PM 4.13 in the proposed Ecosystem Amendment. However, the combined effects of many small unscreened diversions and lack of suitable refugia and food resources present challenging environmental conditions leading to reduced survival during salmon migration. Fish screening can be an additional conservation tool to minimize potential loss of fish.

The Council relies on prioritization of unscreened diversions by other agencies. These partner agencies set their own priorities for fish passage remediation and water diversions. CDFW has prioritization criteria specific to unscreened diversions and develops a priority list of regional annual water diversions for screening based on the following ranking criteria: presence of listed and at-risk species, number of other diversions in the watershed, location of the diversion, intake orientation, duration of pumping, and ongoing efforts in cooperation with the diverter to screen the facility (see Draft PEIR Attachment C, Text of Proposed Delta Plan Ecosystem Amendment, page 517).

Implementation of ER Recommendation “H” will inform water diversion screening priorities, and these priorities are tracked by PM 4.13. The PM 4.13 metric tracks the

number of unscreened diversions that are prioritized in the Delta region, and the number of priority diversions that are screened.

**LO4-12:**

As described in response LO4-6, the conversion of Farmland to nonagricultural uses could occur as a result of the implementation of projects in response to the proposed Ecosystem Amendment. Revised Mitigation Measure 7-1(a) through (h) would minimize impacts associated with the conversion to nonagricultural use of Farmland, land zoned for agriculture, and land subject to a Williamson Act contract. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed. Revised Mitigation Measure 7-1(a) through (h), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P 1(b)(2).

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

See response LO4-10 regarding analysis of invasive aquatic vegetation.

The Proposed Project includes New Recommendation, ER R“G,” Align State Restoration Plans and Conservation Strategies with the Delta Plan, which would encourage coordination and alignment among State strategies, plans, and programs, including the Public Lands Strategy, with the priority attributes described in Draft PEIR Appendix C, *Text of Proposed Delta Plan Ecosystem Amendment*, Attachment C-3.3, Proposed Appendix Q2. The Proposed Project also includes new Delta Plan administrative performance measure ER RG-01, corresponding to New Recommendation ER R“G” calling for DPIIC coordination to align state, local, and regional restoration strategies, plans, or programs in the Delta to be consistent with the priority restoration attributes described in Appendix Q2.

**LO4-13:**

The comment states that the Draft PEIR does not provide adequate consideration of GHG emissions from carbon sequestration projects.

As described under Impact 5.4-6 (pages 5.4-55 and 5.4-56), some projects may increase carbon sequestration and result in other GHG-reducing benefits. Long-term effects of restoration on GHG emissions are expected to be positive, because they would provide increased carbon sequestration. As further explained on pages 5.4-59 and 5.4-60, it may be infeasible to prevent the inundation of certain agricultural lands and wildlife habitat if levees are modified or removed, which would result in a conflict with measures calling for preservation of agricultural lands that provide carbon sequestration.

On the other hand, long-term effects of ecosystem restoration on GHG emissions are expected to be positive, because they would provide increased carbon sequestration. However, the relative scale of sequestration gained from restoration when compared to emissions increases cannot be calculated or determined at this time, and it is not known whether increased sequestration would offset increased emissions. Project-level

- 1 impacts would be addressed in future site-specific environmental analysis conducted by
- 2 lead agencies at the time such projects are proposed. Therefore, the potential impact
- 3 and applicable timeframes for different types of expected emissions would be evaluated
- 4 by other entities at the time projects are proposed.
- 5 See Topical Response 2: Approach to the Environmental Analysis for further discussion
- 6 of the approach to the environmental analysis and implementation and enforcement of
- 7 Delta Plan Mitigation Measures.

**Constable, Daniel@DeltaCouncil**

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**From:** Doug Brown <Doug@DouglasEnv.onmicrosoft.com>  
**Sent:** Tuesday, November 30, 2021 6:17 PM  
**To:** Delta Council Ecosystem Amendment  
**Subject:** Delta Plan Ecosystem Amendment PEIR

Dear Ms. Ross:

The eight public agencies that make up the Lower Sacramento River/Delta North Regional Flood Management Planning team (RFMP Agencies) appreciate the opportunity to present comments on the Draft Program Environmental Impact Report (Draft PEIR) for the Proposed Delta Plan Ecosystem Amendment. The RFMP Agencies include Solano County, Yolo County, the Sacramento Area Flood Control Agency, the West Sacramento Area Flood Control Agency, the Solano County Water Agency, Reclamation District 2068, the Knights Landing Ridge Drainage District, and Reclamation District 1600. These eight agencies came together in 2014 to implement a collective vision of integrated flood, habitat and agriculture within the Yolo Bypass/Cache Slough Complex and the surrounding region.

The following are the RFMP Agencies' comments on the Draft PEIR for your consideration:

**Constrained List of Potential Activities.** The Draft PEIR states on page ES-8 that with implementation of the ecosystem amendment, the anticipated projects would result in improved function and connectivity of floodplain habitat (e.g., setback levees; new or modified levees; or levee removal, degradation, or breaching); projects that would restore, protect, or enhance wetlands, streams, riparian habitat, and upslope watershed sites (e.g., tidal and/or nontidal wetland restoration; or stream and riparian habitat, and upslope watershed site restoration); projects that would result in subsidence reversal activities (e.g., establishment of tule ponds or rice ponds on Delta islands); and projects that involve removal of non-native terrestrial and aquatic invasive species and revegetation with native plants. The proposed project does not include the construction of any non-ecosystem related projects within the Delta.

This approach is fundamentally flawed because it solely focuses on ecosystem enhancement projects while specifically excluding projects that do not include clear ecosystem restoration components. If the regulations included in Chapter 4 of the Delta Plan only applied to ecosystem-focused projects, this approach might make sense. However, the Delta Plan regulations apply to all projects within the Delta that are considered Covered Actions. This includes a broad range of projects that are regularly needed to protect public safety and maintain the Delta's agricultural heritage including, but not limited to, drainage canal and levee repair projects, utility infrastructure upgrades, erosion repair projects, long-term flood system operations and maintenance, water supply/municipal water quality protections, installation and maintenance of agricultural water supply diversions, stormwater improvements, road and bridge repairs and replacements, and recreational improvements.

By ignoring these projects in the impact analysis, the Draft PEIR fails to consider how the ecosystem amendment will affect the ability to implement these needed infrastructure improvements within the Delta. The ecosystem amendment adds additional regulatory burdens that will reduce the ability to implement needed infrastructure improvements or will restrict their implementation entirely.

It is unclear how an EIR can be considered legally adequate when no information is included regarding how the proposed project, which includes changes in regulations, would affect the entire spectrum of projects being regulated. The Final PEIR needs to clarify whether the ecosystem amendment would only apply to ecosystem-focused projects and if not, why the environmental impacts associated with implementing non-ecosystem oriented Covered Actions are not included in the Draft PEIR.

LO5-1

**Lack of Responsiveness to Notice of Preparation Comments.** Comments provided by the RFMP Agencies on the Notice of Preparation appear to have been ignored in the Draft PEIR. Additionally, comments were received from a broad spectrum of stakeholders on the Notice of Preparation, as provided in Appendix A of the Draft PEIR, that discussed a wide range of potential environmental impacts associated with project implementation. Many of these comments appear to have been ignored or dismissed without providing any justification for their dismissal. To ensure these important comments were considered and appropriately addressed in the Draft PEIR, the Final PEIR should include a matrix that references where in the environmental document specific comments were addressed, and if not addressed, the justification for not considering them when preparing the Draft PEIR.

LO5-2

**Loss of Agricultural Productivity.** The viability of agricultural lands within the Delta, which contribute directly to preserving the Delta as a Place, is increasingly uncertain with the continued conversion of agricultural land to habitat. This conversion creates land that no longer produces income that can be assessed for levee maintenance or for applicable water agency fees. Without this revenue source, levees that protect viable agricultural lands and communities cannot be maintained or repaired without outside resources that may not be available. Without levees, the farm economy and the communities that are supported by agricultural productivity cannot function and new habitat areas cannot be protected. We strongly encourage the Delta Stewardship Council to consider a broad agricultural mitigation approach that fully offsets the loss of agricultural productivity anticipated with habitat restoration projects supported by the ecosystem amendment. This mitigation should include habitat restoration proponents providing direct investments to enhance agricultural productivity as well as addressing the loss of revenue dedicated to flood system operation and maintenance. Developing such an approach would provide the basis for addressing agricultural productivity impacts programmatically in a way that would facilitate implementation of the cumulative habitat restoration projects being planned in the region. The mitigation measures identified in the Draft PEIR do not adequately offset the significant adverse agricultural resource impacts that are anticipated to occur with project implementation.

LO5-3

**Impacts on Water Rights Holders.** Based on the assumption that the ecosystem amendment will encourage ecosystem projects, the introduction of new listed species and/or the increase in the presence of listed species in the region could affect the ability of water rights holders to withdraw the water necessary to meet existing municipal drinking water beneficial uses, manage wetlands, and ensure continued agricultural water diversions and operations consistent with historic practices. This issue is of such importance that the California Department of Water Resources is partnering with Solano County to prepare a Habitat Conservation Plan within the Cache Slough Complex to specifically address the anticipated increase in take of listed aquatic species associated with the implementation of restoration projects in the Delta. Further, potential changes in water quality as more ecosystem restoration projects are developed can impact municipal water intakes in the region. However, the Draft PEIR ignores these concerns and dismisses the impacts on water rights holders by solely focusing on potential changes in water levels (Draft PEIR pg. 5.18-29). The Final PEIR needs to evaluate the potential impacts that restoration projects encouraged by the ecosystem amendment would have on water rights holders in the Delta and their ability to continue to secure the water supply necessary to maintain their operations in the Delta.

LO5-4

In addition, the Draft PEIR fails to identify impacts to water quality and supply due to increased consumptive use associated with increased habitat restoration in the Delta. Restored habitat tends to consume more water per acre than agricultural uses. Although converting land uses from farming to habitat may be within the definition of beneficial use, the additional consumption will mean less water will flow through the Delta, potentially reducing Delta outflow and degrading the remaining water quality. The Final PEIR needs to address this impact and identify appropriate mitigation.

**Cumulative Impacts.** The Delta is the focus area for multiple ecosystem restoration initiatives. These habitat restoration initiatives can have cumulative effects when combined with the ecosystem amendment on the operation and maintenance of existing agricultural and municipal water diversions, such as the North Bay Aqueduct in the Lower Yolo Bypass/Cache Slough Complex. The increased attraction and presence of listed species and the potential for increased exposure to water intakes could lead to new restrictions on beneficial water supply uses and the degradation of municipal water quality. In addition, storm water drainage within this watershed may be adversely affected and subject to increased regulation. Finally, the land use conversion and associated changes in vegetative cover often associated with habitat improvement projects could cumulatively affect conveyance within the flood system. The cumulative

LO5-5



impact analysis included in the Draft PEIR does not adequately assess these impacts. A more thorough analysis of the proposed project's cumulative impacts should be provided in the Final PEIR.

↑ LO5-5  
| cont

**Continued Engagement with RFMP Agencies.** We appreciate this opportunity to provide input on the content of the Draft PEIR and would appreciate the opportunity to continue to remain engaged in the CEQA process as the Delta Stewardship Council prepares the Final PEIR. Our combined agencies provide a wealth of knowledge regarding Delta land uses and the issues of concern for our constituents who live and work in the Delta. While we understand the critical need to improve ecosystem function within the Delta, we believe this goal can be achieved with solutions that do not undermine the Delta's invaluable existing environmental and agricultural resources. We are available and willing to continue to engage with Delta Stewardship Council staff and the EIR consultant team during preparation of the Final PEIR and look forward to opportunities to do so.

LO5-6

Submitted on behalf of the eight RFMP agencies.

Sincerely,

Doug Brown  
Principal  
Douglas Environmental  
916-739-8407

**LO5 Lower Sacramento River/Delta North Regional Flood Management Agencies (Solano, Yolo, SAFCA, WSAFCA, RD 2068, Knights Landing Ridge Drainage District, RD 1600)**

**Responses to Comments from LO5 Lower Sacramento River/Delta North Regional Flood Management Agencies (Solano, Yolo, SAFCA, WSAFCA, RD 2068, Knights Landing Ridge Drainage District, RD 1600)**

**LO5-1:**

The Proposed Project evaluated in the Draft PEIR is the amendment of Chapter 4 (*Protect, Restore, and Enhance the Delta Ecosystem*) of the Delta Plan.

As presented in Draft PEIR Chapter 2, *Delta Plan Background*, on pages 2-10 and 2-11, the Delta Plan includes five core subject matter chapters (Delta Plan Chapters 3 through 7). The subject matter chapters in the Delta Plan are:

- ◆ Reliable Water Supply (Chapter 3, *A More Reliable Water Supply for California*)
- ◆ Delta Ecosystem Restoration (Chapter 4, *Protect, Restore, and Enhance the Delta Ecosystem*)
- ◆ Protection and Enhancement of the Delta as an Evolving Place (Chapter 5, *Protect and Enhance the Unique Cultural, Recreational, Natural Resource, and Agricultural Values of the California Delta as an Evolving Place*)
- ◆ Water Quality Improvement (Chapter 6, *Improve Water Quality to Protect Human Health and the Environment*)
- ◆ Flood Risk Reduction (Chapter 7, *Reduce Risk to People, Property, and State Interests in the Delta*)
- ◆ Funding Principles (Chapter 8, *Funding Principles to Support the Coequal Goals*)

Each subject matter chapter in the Delta Plan contains performance measures to track progress toward meeting the Delta Plan's objectives. The Delta Plan subject matter areas and performance measures are summarized in subsections 2.2.2 through 2.2.8 of Draft PEIR Chapter 2.

Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, summarizes and describes the general types of activities, construction activities, resulting constructed infrastructure, and operations and maintenance activities that could be implemented by other entities in response to implementation of the proposed Ecosystem Amendment.

As described in Topical Response 2: Approach to the Environmental Analysis, the analysis in the PEIR assumes that the proposed Ecosystem Amendment, as well as the rest of the Delta Plan as previously adopted, would be implemented and achieve their desired outcomes regardless of whether the outcomes are expressed as policies or recommendations. As also explained in Topical Response 2, potential significant impacts associated with implementing the existing, unchanged Delta Plan policies,

1 recommendations and performance measures were evaluated at a program level in the  
2 2013 Delta Plan PEIR and the 2018 Delta Plan Amendments PEIR, as certified by the  
3 Council in 2013 and 2018, respectively.

4 See Topical Response 2: Approach to the Environmental Analysis for further discussion  
5 of the approach to the environmental analysis and implementation and enforcement of  
6 Delta Plan Mitigation Measures.

7 See Topical Response 1: Development and Purpose of the Proposed Ecosystem  
8 Amendment for additional information about the extensive process undertaken to  
9 develop the proposed Ecosystem Amendment.

#### 10 **LO5-2:**

11 Subsection 1.3, Environmental Review and Approval Process, of Draft PEIR Chapter 1,  
12 *Introduction*, describes the environmental review and approval process for preparing the  
13 Draft PEIR, including publication and circulation of the NOP, consistent with CEQA  
14 section 15082, to obtain suggestions and information from responsible, trustee, and  
15 involved federal agencies and members of the public, including organizations and  
16 individuals, on the scope and content of the environmental analysis to be included in the  
17 proposed Ecosystem Amendment PEIR. The NOP, and comments received in response  
18 to the NOP, were included in Appendix A of the Draft PEIR. The information provided  
19 was considered in preparing the Draft PEIR. The introduction section of each technical  
20 section in Chapter 5 identifies the topics addressed that were received in response to  
21 the NOP.

22 Comments provided during scoping also were taken into consideration in developing the  
23 alternatives analyzed in the Draft PEIR (see Chapter 9, *Alternatives*). These comments  
24 were summarized and presented on pages 9-3 through 9-5 in Chapter 9.

#### 25 **LO5-3:**

26 This comment states concern about reduced agricultural productivity and income  
27 attributed to reduced levee maintenance or repair in or near restoration areas. Through  
28 DLIS, the Council is updating priorities for State investments in the Delta levee system  
29 to reduce the likelihood and consequences of levee failures, to protect people, property,  
30 and state interests, while advancing the coequal goals of improving water supply  
31 reliability, restoring the Delta ecosystem, and protecting and enhancing the values of  
32 the Delta as an evolving place. At its August 2021 meeting, the Council reviewed and  
33 approved for purposes of rulemaking an update to DLIS based on new elevation  
34 information, approved an addendum to the PEIR for the Delta Plan Amendments, and  
35 authorized staff to initiate rulemaking under the Administrative Procedures Act.

36 See response ST4-4, regarding New Delta Plan Recommendation ER R“B”, described  
37 in Chapter 3, Project Description, recommending the use of the Good Neighbor  
38 Checklist (included in Draft PEIR Appendix C, Text of Proposed Delta Plan Ecosystem  
39 Amendment, Appendix Q2, p. C-3.4 1) to coordinate restoration projects with adjacent  
40 uses. This recommendation is intended to avoid or reduce conflicts with existing uses,  
41 including uses such as agriculture and recreation.

See response LO4-6. Draft PEIR Section 5.3, Agriculture and Forestry Resources, evaluates conversion of Farmland to nonagricultural uses which could occur as a result of the implementation of projects in response to the proposed Ecosystem Amendment. Revised Mitigation Measure 7-1(a) through (h) would minimize impacts associated with the conversion to nonagricultural use of Farmland, land zoned for agriculture, and land subject to a Williamson Act contract. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such facilities are proposed. Revised Mitigation Measure 7-1(a) through (h), or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P 1(b)(2).

#### **LO5-4:**

As described in the Draft PEIR in Chapter 3, *Project Description* (page 3-2), one of the objectives specific to the proposed Ecosystem Amendment is to “create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.” As a result, it is inherent in the Proposed Project that an intended outcome is a restored landscape that supports native species recovery, and that flexibility needed for water supply reliability would be provided.

Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, subsection 4.2.1, *Changes in Water Flows*, describes the role of the State Water Resources Control Board (SWRCB) in preserving, enhancing, and restoring the quality of California’s water resources for the protection of the environment, public health, and beneficial uses. The Bay-Delta Water Quality Control Plan (Bay-Delta Plan) identifies beneficial uses of water, establishes water quality and flow objectives needed to protect those uses, and establishes a program of implementation for achieving the objectives (SWRCB 2019). Implementation of projects or actions by entities other than the Council related to restoration, protection, and enhancement of natural communities in the Delta has the potential to indirectly affect water flows in the Delta through potential changes in hydrodynamic conditions and salinity. Because Central Valley Project (CVP) and State Water Project (SWP) facilities in the Delta and upstream watersheds are operated to meet current Delta salinity standards at several locations pursuant to Water Right Decision 1641 for implementation of the Bay-Delta Plan, changes to operations of these facilities and resultant changes in flows to comply with salinity standards may be required. For example, as stated on page 5.11-130, D-1641 establishes maximum salinity objectives, including objectives for salinity (measured as EC) and chloride concentrations, at several locations in the Delta and facilities in the Delta. Facilities in upstream watersheds are operated to meet the requirements of D-1641, which would not change with projects implemented by other entities in response to the proposed Ecosystem Amendment.

The Draft PEIR evaluates potential effects to aquatic and terrestrial biological resources that would result from implementation of actions by other entities in response to the Proposed Project (see Section 5.5, *Biological Resources - Aquatic Impacts* 5.5-1 and 5.5-2 and Section 5.6, *Biological Resources – Terrestrial Impacts* 5.6-3 and 5.6-4). Potential changes to water quality that would result from implementation of actions by

other entities in response to the Proposed Project are evaluated in Section 5.11, *Hydrology and Water Quality*, Impact 5.11-1. See Draft PEIR subsection 5.11.2, Environmental Setting, and 5.11.3, Regulatory Setting, in *Hydrology and Water Quality* for a description of water rights and water rights holders for the Primary Planning Area and Extended Planning Area. For evaluation of potential changes to water supply availability to users of Delta water that would result from implementation of actions by other entities in response to the Proposed Project, see Section 5.18, *Utilities and Public Services* Impact 5.18-2 on page 5.18-29 of the Draft PEIR. As stated in Impact 5.18-2, certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes. However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta and the impact was determined to be less than significant.

As stated in Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-6, the analysis in the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. Therefore, projects would be constructed and operated in compliance with existing water rights. Furthermore, as discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, once specific projects are proposed in response to the proposed Ecosystem Amendment, project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies. Projects implemented in response to the proposed Ecosystem Amendment by other entities would be implemented in compliance with relevant federal, State, and local laws, regulations and ordinances. All projects or activities recommended in the proposed Ecosystem Amendment would be required to comply with existing water rights.

The Draft PEIR analyzes changes to water quality and supply in Sections 5.11 (*Hydrology and Water Quality*) and 5.18 (*Utilities and Public Services*), respectively. The requested site-specific level of detail needed to analyze the impacts of consumptive water use for restoration compared to agricultural land uses (e.g., specific crop or vegetation type and respective evapotranspiration demands, soil (texture, structure, infiltration rates) conditions, crop irrigation patterns, etc.) would require speculation in this program-level PEIR. As discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, this PEIR assesses the potential effects of different types of projects and activities that could be undertaken by other entities in response to the proposed Ecosystem Amendment. Project-level impacts such as changes in land uses and associated changes in water consumption or sufficiency of water supplies, would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review.

**LO5-5:**

Table 7-2 (on pages 7-3 through 7-8) in Draft PEIR Chapter 7, *Cumulative Impacts*, includes a representative sample of the reasonably foreseeable and probable programs, projects, and policies that could have impacts that cumulate with the impacts of the Proposed Project, and the other programs, projects, and policies included in the cumulative impact assessment. These projects include other habitat restoration projects. In addition to the representative sample found in Table 7-2, there are various other types of infrastructure projects within the Planning Area (e.g., water infrastructure projects) that could contribute to cumulative impacts.

The cumulative impact analysis presented in Chapter 7 includes analysis of cumulative impacts associated with water supply (see page 7-41 through 7-43); water quality, storm drainage, flooding, (see pages 7-30 through 7-33); and land conversion (see page 7-33).

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review.

See response LO5-4 for discussion of how it is inherent in the Proposed Project that an intended outcome is a restored landscape that supports native species recovery, and that flexibility needed for water supply reliability would be provided.

**LO5-6:**

This comment is noted and will be forwarded to the Council.

**Main Office**

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**Treatment Plant**

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Nicole Coleman

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November 30, 2021

Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

Via Electronic Mail: [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

**Subject: Comments on Delta Plan Ecosystem Amendment Draft Program  
Environmental Impact Report**

Dear Council Members:

The Sacramento Regional County Sanitation District (Regional San) appreciates the opportunity to comment on the Delta Stewardship Council's (Stewardship Council) *Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report* (Draft PEIR). Regional San supports the Stewardship Council's ongoing efforts to refine the Delta Plan to ensure that it serves the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. We offer our comments on the Draft PEIR in the following pages.

LO6-1

**Background:**

Regional San provides wastewater collection, conveyance and treatment for over 1.4 million people in the Sacramento region. On average, we safely convey, treat and discharge 140 million gallons per day (mgd) of wastewater in accordance with our National Pollutant Discharge Elimination System (NPDES) permit. Regional San is also in the process of constructing its EchoWater Project, a nearly \$2 billion investment that will produce high-quality disinfected tertiary treated water suitable for recycling and reuse for a broad range of beneficial uses in the Delta region.

LO6-2

Regional San has worked with the Stewardship Council since 2009 on efforts including the Delta Plan, Delta Science Plan, and various Delta Independent Science Board work products. Regional San previously submitted comments on the Stewardship Council's three technical white papers and the Draft Ecosystem Amendment, and appreciate staff's ongoing attention to and consideration of our comments.

LO6-3

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Page 2

### **Regional San Comments Pertaining to the Draft PEIR**

Suggested edits are in ~~strikethrough~~/underline format.

#### **Chapter 4.2.7, p. 4-23, lines 23-27**

This Chapter describes various projects and actions that could benefit from improving the efficiency of the regulatory process to help facilitate more rapid implementation of these projects. We suggest the following edits to improve clarity on one of the actions listed.

“Development of extensive baseline data ~~before implementing major management actions and construction projects in the Delta~~ (e.g., collection of data on the current state of nutrients, aquatic vegetation, and the food web in areas that may be affected by new wastewater treatment facilities ~~or upgrades to existing facilities, as has been done by the Delta Science Program’s Operation Baseline~~) to understand the effectiveness of restoration actions, to adaptively manage projects and to improve restoration design in the future.”

LO6-4

#### **Chapter 5.5.2, p. 5.5-7, lines 20-21**

This subsection focuses on multiple factors affecting aquatic biological abundance, including contaminants. In the list of contaminants with the potential to affect aquatic species in the Delta, it states that ammonium is considered an “emerging pollutant”. However, ammonium is a nutrient, and is, at some relatively low concentrations, a natural part of the Delta ecosystem. Ammonium is also present in the treated effluent of some wastewater treatment plants. However, the water quality impacts and the treatment processes that reduce the concentrations of ammonia/ammonium in effluent (i.e. nitrification) are not new, so it is not accurate to classify ammonium as an “emerging pollutant”. We suggest the following edit to the description of “emerging pollutants”:

LO6-5

“Emerging pollutants” such as fluorine-rich substances (perfluorooalkyl substances, or PFAS) (Lin et al. 2018), ~~ammonium~~, and endocrine-disrupting chemicals”

#### **Chapter 5.5.2, p. 5.5-8, lines 1-9**

This section references research conducted that suggested that nitrogen, as ammonium, can inhibit nitrate uptake by phytoplankton, thus limiting primary and secondary productivity. However, the inhibition of phytoplankton growth due to the presence of high ammonia concentration remains a subject of scientific investigation in the Delta and is considered by many researchers to be either an unresolved or unlikely hypothesis. Regional San suggests the following edits to be reflective of more recent research that has been conducted on this topic:

LO6-6

“There are currently many sources of nitrogen for the Delta. Nitrogen can be found in several forms in the aquatic environment, with each form having different sources and different implications for the Delta ecosystem. Nitrogen as a nutrient (nitrate) fuels plant growth, and thus, over-enrichment can favor some species over others, changing the relative abundance of species. Nitrogen as ammonium ~~has also been hypothesized to~~ can inhibit nitrate uptake by phytoplankton, thus limiting primary and secondary productivity; this effect has been the subject of ~~much previous~~ investigations (Foe et al. 2010; Dugdale et al. 2007; Glibert 2010; ~~Berg et al. 2019~~). However, many recent studies have found that phytoplankton can grow at similar rates



using ammonium or nitrate as a nitrogen source, and that phytoplankton growth in the Delta is commonly limited by other factors, such as light availability and clam grazing (Cloern et al. 2014; Berg et al. 2017; Kraus et al 2017; Berg et al. 2019; Strong et al 2021).

↑ LO6-6  
cont.

**Chapter 5.11.2, p. 5.11-10, lines 1-39**

This subsection describes surface water quality in the Delta and provides a focused discussion on salinity. The State Water Board establishes salinity water quality objectives for the Delta in its Bay-Delta Plan. Additionally, the Central Valley Regional Water Quality Control Board (Regional Water Board) currently has an ongoing, long term, stakeholder led salt and nitrate control program under way known as CV-SALTS. Regional San suggests that both the Bay-Delta Plan and the CV-SALTS program be referenced in this section.

LO6-7

**Chapter 5.11.2, p. 5.11-14, lines 9-17**

This subsection on page 5.11-14 discusses nutrients, its sources and their effect on primary production. However, it should be made clear that nutrients alone do not control primary production in the Delta; other factors, are also acknowledged to play a role. We recommend the following edits to this subsection.

“Nutrients, primarily nitrogen (N) and phosphorus (P) compounds, may, in combination with increased water temperature and reduced flow rates, affect primary production in the Delta (CVRWQCB 2018) and may ~~trigger~~ contribute to an excessive growth of algae. Primary sources of nutrients are erosion, agricultural runoff, urban runoff, and treated wastewater effluent. The largest contributor of nutrient loads to the Delta is the Sacramento River, with the San Joaquin River seasonally important, especially in the summer (Dahm et al. 2016).”

Reference: Central Valley Regional Water Control Board (CVRWQCB). 2018. Delta Nutrient Research Plan. 40 p.

LO6-8

**Chapter 5.11.4, p. 5.11-125**

This section discusses impacts and mitigation measures. The evaluation of the potential changes to hydrology and water quality that would result from the implementation of the proposed project must evaluate and address the potential changes in the intensity and frequency of the tidally-induced reverse flows in the Lower Sacramento River near Freeport. This evaluation and acknowledgement is currently lacking in this section. Consistent with the intent of Delta Plan Policy DP-P2, Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats, which requires that: “(a) Water management facilities, *ecosystem restoration*, and flood management infrastructure *must 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,” (emphasis added), the Draft PEIR must address the future potential impacts of tidal reversals on the operation of Regional San’s facilities. In this regard, it is important to consider the cumulative impact of this proposed project with future Delta Conveyance proposals. (Delta Plan Chapter 3).

LO6-9

Delta Stewardship Council  
November 30, 2021  
Page 4

**Chapter 5, p. 5.18-2, lines 13-14**

This subsection describes wastewater collection and treatment systems in the Delta. Regional San recommends that the description of sanitary sewer systems should also include pump stations and lift stations. Pipelines could be both gravity or pressurized and may also have Maintenance Holes (Manholes) and Air Release Valves (ARVs) attached to the pipes. All wastewater collection, conveyance, treatment and disposal facilities (including submerged outfalls) must be identified and considered in any future projects that would require relocation of such facilities. It is important to include all of these assets in the description of mitigation measures.

LO6-10

**Chapter 5, p. 5.18-24. Lines 17-19**

The Draft PEIR states “project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects [are proposed?]”. It is important that the Delta Plan and its PEIR clearly state that (1) proponents of ecosystem restoration projects must consult with Regional San and other Delta public agencies in developing such projects (prior to and during CEQA review for such projects), (2) all the costs for relocations, increased capacity, and any other potential impacts on existing wastewater facilities must be clearly identified in a project level CEQA document and (3) such impacts (financial and environmental) must be fully mitigated by the lead agencies, consistent with the Delta Plan Policy DP-P2 (quoted above).

LO6-11

**Chapter 5, p. 5.18-3, Table 5.18.2**

Please state names as follows:

- Sacramento Regional County Sanitation District (or Regional San)
- Sacramento Area Sewer District (or SASD)

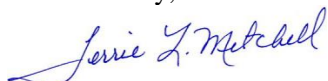
LO6-12

**Conclusion:**

Regional San offers the above comments for your consideration. For your convenience, we have also enclosed with this letter the cited references. We look forward to continuing to work with the Stewardship Council and encourage your staff to continue robust stakeholder engagement and collaboration with regional and local entities, as this and future Delta Plan amendments are developed. If you have any questions, please contact me at (916) 876-6092 or [mitchellt@sacsewer.com](mailto:mitchellt@sacsewer.com) or Samsor Safi at (916) 876-6290 or [safis@sacsewer.com](mailto:safis@sacsewer.com).

LO6-13

Sincerely,



Terrie L. Mitchell  
Manager, Legislative and Regulatory Affairs

Delta Stewardship Council  
November 30, 2021  
Page 5

cc: Jessica Pearson, Executive Officer, Delta Stewardship Council  
Christoph Dobson, District Engineer, Regional San  
Chris Hunley, Environmental Program Manager, Regional San  
Samsor Safi, Associate Engineer, Regional San  
Lisa Thompson, Chief Scientist, Regional San  
Tim Mussen, Scientist, Regional San

Enclosures:

Berg et al 2017  
Berg et al 2019  
Cloern et al 2014  
Kraus et al 2017  
Strong et al 2021

## **LO6 Regional San**

### **Responses to Comments from LO6 Regional San**

#### **LO6-1:**

This comment is noted and will be forwarded to the Council. See the responses to comments provided in this letter.

#### **LO6-2:**

This comment is noted. It presents background information on Regional San.

#### **LO6-3:**

This comment is noted and will be forwarded to the Council.

#### **LO6-4:**

The fifth bullet on page 4-23 is revised as follows:

- ♦ Development of extensive baseline data before implementing major management actions and construction projects in the Delta (e.g., collection of data on the current state of nutrients, aquatic vegetation, and the food web in areas that may be affected by new wastewater treatment facilities or upgrades to existing facilities, as has been done by the Delta Science Program's Operation Baseline) to understand the effectiveness of restoration actions, to adaptively manage projects and to improve restoration design in the future.

#### **LO6-5:**

The seventh bullet on page 5.5-7 is revised as follows:

- ♦ "Emerging pollutants" such as fluorine-rich substances (perfluoroalkyl substances, or PFAS) (Lin et al. 2018), ~~ammonium~~, and endocrine-disrupting chemicals

#### **LO6-6:**

The first paragraph on page 5.5-8 is revised as follows:

There are currently many sources of nitrogen for the Delta. Nitrogen can be found in several forms in the aquatic environment, with each form having different sources and different implications for the Delta ecosystem. Nitrogen as a nutrient (nitrate) fuels plant growth, and thus, over-enrichment can favor some species over others, changing the relative abundance of species. Nitrogen as ammonium has also been hypothesized to can-inhibit nitrate uptake by phytoplankton, thus limiting primary and secondary productivity; this effect has been the subject of much previous investigations (Foe et al. 2010; Dugdale et al. 2007; Glibert 2010; Berg et al. 2019). However, many recent studies have found that phytoplankton can grow at similar rates using ammonium or nitrate as a nitrogen source and that phytoplankton growth in the Delta is commonly limited by other factors such as light availability and clam grazing (Berg et al. 2019).

**LO6-7:**

The Central Valley Salinity Alternatives for Long-Term Sustainability initiative (CV-SALTS) is described in the environmental setting discussion for the Delta Watershed Planning Area in Chapter 11, *Hydrology and Water Quality*. The Bay-Delta Plan is also referenced in the Regulatory Setting section.

**LO6-8:**

The first paragraph on page 5.11-14 is revised as follows:

Nutrients, primarily nitrogen compounds (N) and phosphorus (P) compounds, may, in combination with increased water temperature and reduced flow rates, affect primary production in the Delta (Central Valley Regional Water Board 2018) and may ~~trigger~~ contribute to an excessive growth of algae. Primary sources of nutrients are erosion, agricultural runoff, urban runoff, and treated wastewater effluent. ...

This citation is also added to Draft PEIR Chapter 11, *References*.

**LO6-9:**

Any covered action, including projects undertaken in response to the Proposed Project, will need to demonstrate consistency with the Delta Plan regulatory policies, including DP P2. As explained in Draft PEIR Chapter 1, subsection 1.1 Overview and Use of the Delta Plan, The Delta Plan “contains regulatory policies with which State and local agencies are required to comply. The Delta Reform Act establishes a certification process for compliance with the Delta Plan. Under this certification process, State and local agencies that propose to carry out, approve, or fund any plan, program, or project that meets the definition of a “covered action” (Wat. Code section 85057.5(a)) must certify that the plan, program, or project is consistent with the Delta Plan. This requires the agency to submit to the Council a certification of consistency with the Delta Plan for the covered action.” This process is discussed in more detail in Draft PEIR Chapter 2, *Delta Plan Background*.

Once specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

Draft PEIR Chapter 7, *Cumulative Impacts*, includes consideration of the Delta Conveyance Project (see Table 7-2 on page 7-5) in the cumulative impact analysis for the Proposed Project.

**LO6-10:**

The last paragraph on page 5.18-2 is revised as follows:

Municipal sewer systems consist of sewer collection pipelines (and appurtenant features), treatment facilities, pump stations, lift stations, and outfall structures or disposal systems. ...

**LO6-11:**

As discussed in Chapter 4, General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Once specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, Regional San would be coordinated with, as appropriate, and project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies.

Delta Plan Policy DP P2 (which is not part of the Proposed Project being evaluated in the Draft PEIR) applies to covered actions and, in part, requires ecosystem restoration projects be sited to avoid or reduce conflicts with existing uses when feasible, and requires project proponents to consider comments from local agencies (including potentially Regional San). Ecosystem restoration covered actions would be required to demonstrate consistency with DP P2 as part of future certifications of consistency submitted to the Council.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**LO6-12:**

Table 5.18-2 on page 5.18-3 is revised as follows:

Sacramento Regional County Sanitation District (or Regional San)

Sacramento Area Sewer District (or SASD)

**LO6-13:**

This comment is noted and will be forwarded to the Council. See responses to comments in this letter.

# SOLANO COUNTY WATER AGENCY



November 30, 2021

Ms. Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

Subject: Delta Plan Ecosystem Amendment PEIR

Dear Ms. Ross:

## Overview

The Solano County Water Agency (Water Agency) appreciates the opportunity to comment on the Delta Stewardship Council's Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report. Solano County encompasses part of the Sacramento-San Joaquin Delta, most notably much of the Cache Slough Complex, a region in which several large scale habitat restoration projects have been constructed, with additional projects contemplated.

The Cache Slough Complex is a major source of water for agricultural operations, as well as a significant source of municipal drinking water. The Water Agency and the Napa County Flood Control and Water Conservation District contract with the California Department of Water Resources for municipal water supplies from the North Bay Aqueduct (NBA) component of the State Water Project. The NBA provides municipal drinking water to over 500,000 residents in Solano and Napa counties. The aqueduct's intake is located in Barker Slough, on the western side of the Cache Slough Complex.

The NBA is an impaired facility. In addition to the water supply reliability challenges the entire State Water Project faces, the NBA generally exhibits the poorest raw water quality of all State Water Project facilities, due largely to local runoff from the surrounding Barker Slough watershed. Water quality is typically poorest during the rainy season. Often so poor that it is marginally treatable for municipal drinking water purposes. In addition to poor water quality, the NBA is periodically subjected to regulatory pumping curtailments to minimize entrainment of endangered fish species. In recent years the endangered species regulatory pumping restrictions placed on NBA operations have become increasingly stringent and have expanded the "season" when pumping curtailments can be invoked. Pursuant to the Incidental Take Permit issued by the California Department of Fish and Wildlife in 2020, pumping curtailments to protect endangered fish species can now occur between January 15 and June 30.

LO7-1

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Due to prevailing poor water quality conditions and endangered species regulatory restrictions, the NBA water supply can be significantly impaired between the onset of the rainy season and June of each year. During periods when the NBA water supply is not available the NBA water users must rely on alternative sources, to the extent they are available. Pursuant to the Water Agency's NBA water supply contract with the California Department of Water Resources, the Water Agency is obligated to pay annual capital costs of approximately \$11,000,000 per year – whether or not water is delivered. These capital costs represent roughly a third of the Water Agency's annual operating budget. When NBA water supplies are diminished, the impact is two-fold: additional costs to procure alternative water supplies, with less money to do so since the aforementioned \$11,000,000 remains committed to the cover the annual capital costs of the NBA.

LO7-1  
cont.

Given the tenuous condition of the NBA water supply, the Water Agency is concerned that habitat restoration, while laudable, could further reduce municipal water supply reliability for over 500,000 residents in Solano and Napa County, unless the potential adverse water supply impacts are acknowledged and mitigated as habitat restoration efforts move forward in the Cache Slough Complex and the Sacramento-San Joaquin Delta as a whole. The Water Agency's specific comments on the Delta Stewardship Council's Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report are summarized below.

### **Specific Comments**

#### **Section 5.11 Hydrology and Water Quality**

Page 5-11-5 (Figure 5.11.2) - The Putah South Canal is incorrectly identified as part of the Central Valley Project. Neither the Putah South Canal nor any other features of the Solano Project are part of the Central Valley Project.

LO7-2

Pages 5-11-126/127 -*“Planned, proposed, or recently implemented projects that are consistent with the Proposed Project were identified. Published environmental review documents, studies, models and analytical tools, and other information was collected and reviewed for these projects”*

A table listing the various “planned, proposed, or recently implemented projects” would be helpful for the reader to understand the scope and depth of the Hydrology and Water Quality impact analysis, particularly in view of the statement on page 5-11-127:

LO7-3

*“For analysis of this hydrology and water quality resource area, the potential range of effects was identified for each impact based on the information collected for each representative project and the collective implementation of multiple projects, while accounting for uncertainty. A significance determination was then made based on the most extreme, plausible impact identified.”*

Without identifying which projects were evaluated individually or with respect to “collective implementation” it remains unclear whether a “significance determination”



was made based on the most extreme, plausible impact identified. As discussed elsewhere, one of the Water Agency's concerns with respect to water supplies, at least in the Cache Slough Complex, are the cumulative water quality (source water quality of municipal water supplies) and hydrodynamic impacts of "full habitat restoration buildout".

LO7-3  
cont.

Page 5-11-127 - "*Thresholds of Significance*" While violation of a water quality standard or waste discharge requirement is an often cited metric for evaluating impact significance, in the case of habitat restoration and more specifically, dissolved organic carbon, there are no applicable water quality standards, and yet the presence of dissolved organic carbon can have significant adverse impacts with respect to municipal water supplies (creation of water treatment disinfection byproducts for which drinking water quality standards do exist). Based on the information presented in the PEIR, it remains unclear what if any threshold of significance was used to evaluate the impact of increased dissolved organic carbon concentrations on municipal water supplies.

LO7-4

Page 5-11-130 - "*Effects of Constructed Facilities and Operations – regulatory salinity and X2 standards Salinity, X2, and water temperature*" The analysis presented on page 5-11-130 begins with the acknowledgment that habitat restoration projects contemplated as a part of the proposed project could increase salinity, and concludes that because the Central Valley Project and the State Water Project are obligated to maintain Delta salinity levels within certain tolerances specified by Water Rights Decision 1641, compliance with Delta salinity standards would continue irrespective of whatever impact a given restoration project had on salinity levels in the Delta. Not addressed in this analysis is the resulting potential impact to the Central Valley Project and the State Water Project, and more specifically what additional water demands would be placed on the Central Valley Project and the State Water Project in order to remain in compliance with salinity standards as a result of habitat restoration, and assuming additional water from the two water projects is needed, what impact if any could it have on their respective abilities to sustain water deliveries for municipal and agricultural purposes within their service areas.

LO7-5

Page 5-11-132 - "*DOC is a potential significant problem for water treatment facilities in the Delta because elevated concentrations can result in the formation of carcinogenic disinfection byproducts during chlorination. Modeled DOC levels in projects similar to those described in Chapter 4 show that due to the relatively small potential for any increase in DOC exports to be transported to municipal drinking water intakes, no substantial adverse effects were found (DWR and DFW 2016; DWR and CSCC 2014).*"

LO7-6

The potential for increased concentrations of DOC is of grave concern to the municipal water treatment operators and users of the North Bay Aqueduct water supply. During certain times of the year the source water for the North Bay Aqueduct already exhibits elevated concentrations of DOC and as such becomes marginally treatable to drinking water quality standards (see attached comment letter to Ms. Susan Tatayon, Chair of Delta Stewardship Council; dated June 14, 2021). In the case of the North Bay Aqueduct, which provides municipal drinking water to over 500,000 residents in Solano and Napa counties, even a modest increase in DOC could adversely impact water supply

operations, either by expanding the seasonal duration in which the source water cannot be readily treated to drinking water standards, and/or in the form of additional costs to upgrade municipal water treatment facilities.

While habitat restoration projects geographically distant from the North Bay Aqueduct may by themselves be insignificant contributors of DOC at the North Bay Aqueduct, it remains unclear how cumulatively, habitat restoration projects may impact DOC concentrations at the North Bay Aqueduct intake, or for that matter, individual habitat restoration projects located in relatively close proximity to the North Bay Aqueduct intake, such as the proposed Little Egbert restoration project.

LO7-6  
cont.

### Section 5.18 Utilities and Public Services

Page 5.18-23 – “...projects undertaken in response to the proposed Ecosystem Amendment are not anticipated to require the relocation of new water or expanded water or wastewater treatment facilities due to the large cost of relocation and potential environmental impacts due to relocation”.

LO7-7

As discussed elsewhere, under existing conditions the North Bay Aqueduct exhibits poor source water quality, most notably with regard to dissolved organic carbon. Incremental increases in dissolved organic carbon, as a result of the proposed project, could necessitate costly water treatment facility upgrades, with the cost of such upgrades being borne by the water users.

Page 5.18-30 – “...CVP and SWP facilities in the Delta and upstream watersheds are operated to meet requirements under State Water Resources Control Board’s Water Rights Decision 1641, as well as under 2020 ITP from DFW for Long-Term Operation of the SWP. This would not change with projects implemented by other entities in response to the proposed Ecosystem Amendment”.

LO7-8

While it is reasonable to assume that the State Water Project and in this example the North Bay Aqueduct component of the State Water Project will continue to operate in compliance with the 2020 ITP and any successor ITP’s, the impact not addressed here nor apparently elsewhere in the PEIR, is whether the increased abundance of special status and other native fish species – assuming the habitat restoration projects are successful -will necessitate more frequent water diversion curtailments pursuant to the prevailing ITP, and in turn diminish the availability of municipal or agricultural water supplies.

Page 5.18-31 – “Construction and operational activities associated with projects implemented by other entities in response to the proposed Ecosystem Amendment are not anticipated to change water supply availability to users of Delta water within the Delta Watershed or within the Extended Planning Area outside the Delta Watershed Area”.

LO7-9

For the reasons articulated above, the Water Agency believes that at least in the case of the North Bay Aqueduct, the habitat restoration projects implemented by other entities in response to the proposed Ecosystem Amendment could change (diminish) municipal

water supply availability, by worsening existing water quality conditions – most notably via incremental increases in dissolved organic carbon – and/or increasing the frequency of water diversion curtailments to avoid entrainment of special status species. The severity of these impacts would most likely depend on the type of habitat restoration project implemented, and location relative to the North Bay Aqueduct intake. The PEIR is at best, vague on how existing water supplies could be replaced and at what cost. Similarly, the PEIR does not consider the municipal water treatment costs of treating water with incrementally higher concentrations of dissolved organic carbon.

↑  
LO7-9  
cont.**Contact Person**

Thank you for the opportunity to comment on the Delta Plan Ecosystem Amendment Draft Program Environmental Impact Report. Please add me (Roland Sanford – [rsanford@scwa2.com](mailto:rsanford@scwa2.com) / 707-455-1103) to your contact list for this Environmental Impact Report.

LO7-10  
↓

Sincerely,



Roland Sanford  
General Manager

Cc: Thomas Pate, SCWA  
Alex Rabidoux, SCWA  
Chris Silke, Napa County FC&WCD  
Jeanne Zolezzi, Herum-Crabtree-Suntag  
Jennifer Pierre, State Water Contractors

## **L07 Solano County Water Agency**

### **Responses to Comments from L07 Solano County Water Agency**

#### **L07-1:**

This comment provides background information on the SCWA and the North Bay Aqueduct facility.

#### **L07-2:**

Figure 5.11-2 SWP and CVP Facilities in California on page 5.11-5 is revised and is included in Chapter 2 of this Final PEIR. Putah South Canal and any other features of the Solano Project are no longer identified as part of the Central Valley Project (CVP); rather, they are identified as “Other Federal Water Project” features on the figure. Note, additional features also previously identified as CVP features (e.g., South Coast Conduit Project, All-American Canal, and Coachella Canal) were also revised to be correctly categorized as “Other Federal Water Project” features.

#### **L07-3:**

Draft PEIR Section 5.1, *Approach to the Environmental Analysis*, presents a list of projects that are already under review or completed by other agencies that represent examples of the types of projects that could result from implementation of the Proposed Project (see pages 5.1-6 and 5.1-7). The projects listed in Draft PEIR Section 5.1 are examples of the types of projects that could result from implementation of the Proposed Project. This list includes projects in the vicinity of the Cache Slough Complex, such as Arundo Control and Restoration Project in the Cache Slough Complex (Ulati Creek Arundo Control Program), Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, and Lindsey Slough Tidal Marsh Restoration Project, among others. This list is not intended to be exhaustive; rather, it illustrates the types of projects considered during development of the impact evaluation, in combination with the general types of activities and construction methods that could result from implementation of the Proposed Project that are described in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*.

Additionally, Draft PEIR Table 7-2, *Sample of Programs, Projects, and Policies Included in Cumulative Impact Assessment for the Delta Plan Ecosystem Amendment*, includes a representative sample of the reasonably foreseeable and probable programs, projects, and policies that could have impacts that cumulate with the impacts of the Proposed Project, and the other programs, projects, and policies included in the cumulative impact assessment (see pages 7-4 through 7-8). Table 7-2 includes several projects located in the vicinity of Cache Slough, including Lookout Slough Tidal Habitat Restoration and Flood Improvement Project and the Solano Multispecies Habitat Conservation Plan (HCP). As explained on Draft PEIR page 7-4, in addition to the representative sample found in Table 7-2, there are various other types of infrastructure projects within the Planning Area (e.g., water infrastructure projects) that could contribute to cumulative impacts.

See Topical Response 2: Approach to the Environmental Analysis for a discussion of the approach to the environmental analysis and determination of impact significance. In addition to the approach to the environmental analysis presented in Section 5.1, the methods of analysis used to evaluate the potential changes to hydrology and water quality that would result from implementation of actions by other entities in response to the Proposed Project is described on pages 5.11-126 through 5.11-127, which references the information included in both Section 5.1 and Chapter 4.

Draft PEIR Impact 5.11-1 discusses potential water quality impacts of projects that could be constructed and operated in response to the proposed Ecosystem Amendment (see Draft PEIR pages 5.11-129 through 5.11-139). Impacts were found to be significant and unavoidable during project construction and less than significant during project operations. With respect to water supply, as described in Impact 5.18-2 on page 5.18-29 of the Draft PEIR, impacts were determined to be less than significant.

Chapter 7, *Cumulative Impacts*, of the Draft PEIR presents the cumulative impact analysis for the Proposed Project, including potential water quality impacts. Draft PEIR subsection 7.5.2, Cumulative Impacts, presents the cumulative impact analysis for the Proposed Project, including potential water quality impacts (Draft PEIR pages 7-30 through 7-34) and water supply impacts (Draft PEIR page 7-42).

As described on Draft PEIR page 7-2, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Therefore, the Draft PEIR's analysis and conclusions are at a program-level and focus on general types of activities, actions, or potential projects that could result within the Primary and Extended Planning Areas, as defined in Draft PEIR Chapter 3, *Project Description*, due to implementation of the Proposed Project. Once specific implementation projects consistent with the Proposed Project are developed, including projects within or in the vicinity of the Cache Slough Complex, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects. For these reasons, the analysis in this Draft PEIR is inherently cumulative in many regards, in that the Proposed Project consists of the reasonably foreseeable, probable future projects implemented by other public agencies.

#### **LO7-4:**

As appropriate for this program-level analysis, the analysis in the PEIR, does not include specific thresholds for individual water quality parameters, including dissolved organic carbon (DOC), and instead provides a discussion of DOC (Impact 5.11-1) and municipal water treatment (Impact 5.18-1). Once specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, those entities would conduct site-specific environmental analysis and address project-level impacts, including water quality and supply impacts.

Pursuant to CEQA Guidelines section 15064.7(b), Lead Agencies have discretion to formulate their own significance thresholds. Thresholds must be supported by

substantial evidence, which is defined in the CEQA Guidelines section 15384(b) to mean “facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.” The determination by a Lead Agency of whether a project may have a significant effect on the environment calls for careful judgment, based to the extent possible, on scientific and factual data (CEQA Guidelines section 15064(b)(1)). Draft PEIR Section 5.11, *Hydrology and Water Quality*, pages 5.11-127 and 5.11-128, states the applicable thresholds of significance related to water quality. Specifically, an impact related to water quality is considered significant if the Proposed Project would violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater water quality.

Draft PEIR Section 5.11, *Hydrology and Water Quality*, analyzes potential impacts to water supply and water quality that could occur as a result of implementing the Proposed Project. Specifically, Impact 5.11-1 discusses potential water quality impacts of projects that could be constructed and operated in response to the proposed Ecosystem Amendment. Draft PEIR pages 5.11-131 through 5.11-132 includes a discussion of DOC and municipal drinking water intakes, noting that “[m]odeled DOC levels in projects similar to those described in Chapter 4 show that due to the relatively small potential for any increase in DOC exports to be transported to municipal drinking water intakes, no substantial adverse effects were found (DWR and DFW 2016; DWR and CSCC 2014).”

Additionally, Section 5.18, *Utilities and Public Services*, includes evaluation of potential impacts associated with relocation or construction of new water or expanded water treatment facilities that could be a result of projects implemented in response to the proposed Ecosystem Amendment (see Impact 5.18-1).

Draft PEIR Chapter 7, *Cumulative Impacts*, on page 7-32 states that projects implemented by other entities in response to the proposed amendments could result in a cumulatively considerable incremental contribution to a significant cumulative impact related to hydrology and water quality. Implementation and enforcement of Revised Mitigation Measures 3-1(a) through (c) and (e), 5-1(a) through (k), 5-2(a) and (b), 5-4(a) through (c), and 5-5(a) through (e), or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council and can and should be adopted by that agency.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. Project-level impacts, including water quality and cumulative impacts, would be addressed in future site-specific environmental analysis conducted by lead agencies at the time specific projects are proposed in response to the proposed Ecosystem Amendment.

**LO7-5:**

As stated on page 5.11-130, D-1641 establishes maximum salinity objectives, including objectives for salinity (measured as EC) and chloride concentrations, at several locations in the Delta. In addition, facilities in the Delta and upstream watersheds are operated to meet the requirements of D-1641, which would not change with regard to projects implemented by other entities in response to the proposed Ecosystem Amendment. Draft PEIR page 5.11-130 also explains how real-time operations of upstream reservoirs under the CVP and SWP have sufficient flexibility to adjust to changes that could occur from implementation of projects or actions taken in response to the proposed Ecosystem Amendment, and to ensure that salinity and X2 standards continue to be met.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. Project-level impacts, including water quality and water supply, would be addressed in future site-specific environmental analysis conducted by lead agencies at the time specific projects are proposed in response to the proposed Ecosystem Amendment.

**LO7-6:**

See response LO8-4 for a discussion of the potential impacts and cumulative effects to water quality, as evaluated in the Draft PEIR.

**LO7-7:**

As discussed in response LO7-4, the Draft PEIR evaluates potential changes to water quality, including changes to dissolved organic carbon, that would result from implementation of actions by other entities in response to the Proposed Project under Impact 5.11-1.

Section 5.18, *Utilities and Public Services*, includes evaluation of potential impacts associated with relocation or construction of new water or expanded water treatment facilities in response to the Proposed Project, the construction or relocation of which could cause significant environmental effects (see Impact 5.18-1). However, the specific locations and scale of potential possible future new or expanded facilities are not known at this time. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed (see Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*). These projects would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances (see page 5.1-6 of the Draft PEIR), including any existing water quality standards.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review.

#### **LO7-8:**

As described in the Draft PEIR in Chapter 3, *Project Description* (page 3-2), one of the objectives specific to the proposed Ecosystem Amendment is to “create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.” As a result, it is inherent in the Proposed Project that an intended outcome is a restored landscape that supports native species recovery, and that flexibility needed for water supply reliability would be provided.

Draft PEIR Chapter 4, General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment, subsection 4.2.1, Changes in Water Flows, describes the role of the State Water Resources Control Board (SWRCB) for preserving, enhancing, and restoring the quality of California’s water resources for the protection of the environment, public health, and beneficial uses. The Bay-Delta Water Quality Control Plan (Bay-Delta Plan) identifies beneficial uses of water, establishes water quality and flow objectives needed to protect those uses, and establishes a program of implementation for achieving the objectives (SWRCB 2019). Implementation of projects or actions by entities other than the Council related to restoration, protection, and enhancement of natural communities in the Delta has the potential to indirectly affect water flows in the Delta through potential changes in hydrodynamic conditions and salinity. Because Central Valley Project (CVP) and State Water Project (SWP) facilities in the Delta and upstream watersheds are operated to meet current Delta salinity standards at several locations pursuant to Water Right Decision 1641 for implementation of the Bay-Delta Plan, changes to operations of these facilities and resultant changes in flows to comply with salinity standards may be required.

The Draft PEIR evaluates potential effects to aquatic and terrestrial biological resources that would result from implementation of actions by other entities in response to the Proposed Project (see Section 5.5, *Biological Resources - Aquatic Impacts* 5.5-1 and 5.5-2 and Section 5.6, *Biological Resources – Terrestrial Impacts* 5.6-3 and 5.6-4). Potential changes to water quality that would result from implementation of actions by other entities in response to the Proposed Project are evaluated in Section 5.11, *Hydrology and Water Quality*, Impact 5.11-1. For evaluation of potential changes to water supply availability to users of Delta water that would result from implementation of actions by other entities in response to the Proposed Project, see Section 5.18, *Utilities and Public Services* Impact 5.18-2 on page 5.18-29 of the Draft PEIR. As discussed in Draft PEIR Section 5.18, *Utilities and Public Services* Impact 5.18-2 (page 5.18-29 of the Draft PEIR), certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes. However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta, and this impact was determined to be less than significant.



As stated in Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-6, the analysis in the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. Therefore, projects would be constructed and operated in compliance with existing water rights. Furthermore, as discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, once specific projects are proposed in response to the proposed Ecosystem Amendment, project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies. Projects implemented in response to the proposed Ecosystem Amendment by other entities would be implemented in compliance with relevant federal, State, and local laws, regulations and ordinances. All projects or activities recommended in the proposed Ecosystem Amendment would be required to comply with existing water rights.

See Topical Response 2: Approach to the Environmental Analysis, for further discussion of the approach to the environmental analysis. Topical Response 2 includes discussion of Program vs. Project level environmental review, and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time specific projects are proposed in response to the proposed Ecosystem Amendment.

#### **LO7-9:**

As discussed in response LO7-3, certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes. However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta, and this impact was determined to be less than significant. For a discussion of the anticipated water quality impacts related to DOC, see responses LO7-4 and LO7-6. See response LO7-8 for discussion of possible water diversion curtailments associated with increases in special-status species.

See response LO7-7 for discussion of the need to assess potential cost of water treatment facility upgrades. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review.

#### **LO7-10:**

The Council will add Roland Sanford to the contact list to receive future information about the PEIR.

RECLAMATION DISTRICT 1002  
Jeffrey McCormack, Superintendent, Trustee  
c/o John McCormack Co.  
2250 Twin Cities Rd.  
P.O. Box 527  
Walnut Grove, CA 95609

Ms. Harriet Ross, Dep. Planning Dir.

Delta Stewardship Council

Via email: [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

Dear Ms. Ross,

Chapter 4 of the Delta Plan, on Ecosystem Restoration, has policies and criteria that would allow and encourage floodplain restoration and enhancement on the Cosumnes River, above Lost Slough, where we have a levee as Southern border, and Snodgrass Slough our Western border, as well as Sutter Slough and Steamboat Slough where some of us have other farms.

There are people living here in this reclamation district who get severely impacted by floods. Some have been in life-threatening situations, requiring rescue by Sheriffs by boat and air.

There are 60 parcel owners in Reclamation District 1002, extending from Lost Slough in the South to Lambert Road in the North, Franklin Blvd. railroad levee across I-5 to the East, and Snodgrass Slough to the West. Many have families here, and various farms and ranches employ people from outside the RD.

Point Pleasant to the North has flooded in the past. I-5 was closed for weeks and disrupted traffic from Mexico to Canada, requiring re-routing of commercial traffic nationwide. We still have marks on our barn from being under 15 feet of water. That took weeks to drain.

In the last flood season we were told to evacuate 3 times. The Nature Conservancy and DWR, which co-own the McCormack-Williamson Tract to the South using government funds for purchase, lost part of their levee while advocating for the breakdown of ours to flood our land to marsh. That got a downstream cut into a half-levee to create a weir and holding basin for water, and threatened Tyler Island at the Delta Cross-Channel linking Sacramento River to the Mokelumne River system via lower Snodgrass, requiring evacuation of Walnut Grove, and a flood fight.

The cumulative impacts of such policies will also affect the Water Export Tunnels (DCA) proposed for the SE corner of the RD, at Twin Cities Rd. and Franklin Blvd., as well as the Pierson District, to Hood, where haul roads will take tunneling spoils, as well as other parts of the Delta.

We object to the use of eminent domain for these projects, as well as putting burden of implementation onto RDs.

LO8-1

There's a Delta Trail being proposed down the railroad levee along Snodgrass Slough by the Delta Protection Commission, now expanded to include our South levee along Lost Slough, and potentially might be expanded more.

Sea level rise into extended tidal bands and marsh migration inland, as well as proposals for breaking down of our levees, or even just overtopping regularly, should be banned.

A dam should be built for flood control in the upper Cosumnes.

Throwing around the words about protecting Agriculture is contrary to the actions of enabling and encouraging flooding of agricultural properties. "Co-equal goals" and designs to cooperate with Agriculture seems disingenuous.

This whole PEIR should have Socioeconomic chapters to document the human impacts of interfering with hundred year old agricultural operations.

We ask that this Plan chapter be revised, and that Chapter 7 on Agriculture be included in a formal optimization with Input/output analysis and Cost-Benefit Analysis. The aggregate impacts of all these other programs and projects suddenly funded for MultiBenefit levee operations, Agricultural Land Repurposing, breaking down levees to release pressure of sealevel rise, and loss of crops should be included as cumulative aggregate impacts.

Sincerely,

Jeff McCormack, Superintendent

Matt Conover, Consultant

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LO8-1  
cont.  
|  
LO8-2  
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LO8-3  
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LO8-4

**LO8 Reclamation District 1002****Responses to Comments from LO8 Reclamation District 1002****LO8-1:**

This comment provides background information on Reclamation District (RD) 1002 and references two projects that are not related to the Proposed Project.

**LO8-2:**

This comment does not address the adequacy or content of the Draft PEIR; therefore, no further response is required. It will be forwarded to the Council for their consideration.

**LO8-3:**

The comment suggests that the PEIR should have socioeconomic chapters to document the human impacts of interfering with hundred-year-old agricultural practices. The basic purpose of CEQA is to inform decision-makers and the public about the potential significant environmental effects of proposed activities (CEQA section 15002 (a)(1). Human impact on agricultural practices is not in and of itself an environmental impact. While economic or social effects of a project can be used to determine the significance of physical changes to the environment, they are not themselves treated as significant effects on the environment (CEQA section 15131 (a) and (b)). Draft PEIR Section 5.3, *Agricultural and Forestry Resources*, includes analysis of impacts associated with the conversion of farmland associated with the implementation of restoration projects.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

The Council is in the rulemaking process for DLIS to update priorities for State investments in the Delta levee system to reduce the likelihood and consequences of levee failures, to protect people, property, and state interests, while advancing the coequal goals of improving water supply reliability, restoring the Delta ecosystem, and protecting and enhancing the values of the Delta as an evolving place.

**LO8-4:**

This comment addresses the proposed amendment and the Delta Plan. It does not address the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

### 3.2.4 Comments from Organizations

This section contains a copy of the comment letters received from organizations (see Table 3-5), and responses.

**Table 3-5**  
**Organizations Providing Comments on Draft Program Environmental Impact Report**

Letter #	Organizations
OR1	Conservation Groups (Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, North Coast Rivers Alliance)
OR2	Restore the Delta
OR3	State Water Contractors

Stephan C. Volker  
 Alexis E. Krieg (Of Counsel)  
 Stephanie L. Clarke  
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11.213.01

November 30, 2021

**VIA EMAIL**

Harriet Ross, Assistant Planning Director  
 Delta Stewardship Council  
 715 P Street, 15-300  
 Sacramento, CA 95814  
 ecosystemamendment@deltacouncil.ca.gov

**Re: Delta Plan Ecosystem Amendment PEIR**

Dear Ms. Ross:

On behalf of Pacific Coast Federation of Fishermen's Associations, the Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, and North Coast Rivers Alliance (collectively "Conservation Groups") we submit the following comment on the Delta Stewardship Council's Draft Delta Plan Ecosystem Amendment Programmatic Environmental Impact Report ("DEIR"). Please include these comments in the public record for this matter.

## I. INTRODUCTION

The Council indicates that the DEIR is necessary "to address a *fundamental shift* in how conservation is being planned and implemented in the Delta." DEIR ES-1 (emphasis added), *see also* 1-1. To that end, the Council establishes five objectives for the Ecosystem Amendment:

1. Create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.
2. Implement large-scale restoration projects that restore ecosystem function, increase resilience to climate change, are compatible with adjacent land uses, and that support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place.
3. Protect opportunities to restore ecosystems and safeguard against land loss by taking sea level rise and long-term flood risk into consideration; protecting land

OR1-1

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from development; reducing, halting, or reversing subsidence; and incentivizing agricultural land management practices that support native wildlife and counter subsidence.

4. Prevent introduction of non-native invasive species; manage non-native invasive species impacts; and improve fish management to support the reproductive success and survival of native fish.

5. Facilitate implementation of ecosystem protection, enhancement, restoration, and mitigation projects in the Delta by improving the efficiency and effectiveness of actions by public agencies and private organizations engaged in proposing, approving, and permitting such projects.

DEIR ES-4 to ES-5; *see also* 3-2 to 3-3. Yet the Council continues to give short-shrift to the necessary work to protect and restore the Delta, including the flows necessary for fisheries survival.

There can be no dispute that the Delta is in crisis. Water Code § 85001(a). Indeed, the Delta's imminent ecologic collapse is well-recognized. The Central Valley Project ("CVP") and the State Water Project ("SWP") have significantly hampered fish survival, by damming and eliminating or reducing cold freshwater flows from tributary rivers and streams, destroying or rendering inaccessible miles of spawning and rearing habitat, removing natural protections from predators, entraining fish in diversion pumps, decreasing dissolved oxygen, and unsustainably diverting for consumptive use excessive quantities of the Delta's freshwater flows. And agricultural diverters have discharged contaminated runoff into the rivers and groundwater that are tributary to the Delta. These actions have lead to diminished freshwater flows and increased temperature, salinity, herbicides, pesticides, sediment and heavy metals such as selenium. The result is a Delta ecosystem increasingly inhospitable to the now imperiled species that rely upon it for survival. Through the Sacramento-San Joaquin Delta Reform Act of 2009, Water Code section 85000 et seq. ("Delta Reform Act"), the Legislature tasked the Council with implementing a Delta Plan that can reverse the decline of the Delta habitat while making water supplies more reliable.

Pacific Coast Federation of Fishermen's Associations ("PCFFA") is a nonprofit membership organization incorporated in 1976 with headquarters located in San Francisco, California. PCFFA comprises more than 14 separate commercial fishing and vessel owners' associations situated along the West Coast of the United States. By virtue of its combined membership of approximately 750 fishermen and women, PCFFA is the single largest commercial fishing advocacy organization on the West Coast. PCFFA represents the majority of California's organized commercial salmon fishermen and has been an active advocate for the protection of Pacific salmon and their spawning, rearing and migratory habitat for more than 30 years.

OR1-1  
cont.

OR1-2

OR1-3

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Institute for Fisheries Resources (“IFR”) is a non-profit, tax-exempt organization that works to protect and restore salmon and other fish populations and the human economies that depend on them. IFR maintains its principal place of business in San Francisco, California. IFR both funds and manages many fish habitat protection programs and initiatives. In that capacity, IFR advocates for reforms to protect fish health and habitat throughout the West Coast of the United States and has successfully advocated for dam removals, improved pesticide controls, better forestry stream protection standards, reduced discharge of pollutants, and enhanced marine and watershed conservation regulations throughout the West Coast. IFR has worked tirelessly for years to restore and enhance the Delta and its beleaguered fish and wildlife.

San Francisco Crab Boat Owners Association, Inc. (“San Francisco Fishermen”) is a century-old association of owners and operators of small, family-owned fishing boats that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in and depend upon the cold waters of the Pacific Ocean, the San Francisco Bay-Delta and the Sacramento and San Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively involved in community education and advocacy concerning fisheries resources legislation to ensure that the rich heritage of commercial fishing in the Bay Area will survive for future generations.

North Coast Rivers Alliance (“NCRA”) is a non-profit unincorporated association with members throughout Northern California. NCRA was formed for the purpose of protecting California’s rivers and their watersheds from the adverse effects of excessive water diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of environmental degradation. Its members use and enjoy California’s rivers and their watersheds – including the Delta – for recreational, aesthetic, scientific study, and related non-consumptive uses.

Each of these groups is vitally interested in the Council’s Ecosystem Amendment process and all of them urge the Council to learn from the State’s past mistaken management of the Delta and to strengthen the Delta Plan to protect the fish and wildlife resources that depend on the Delta for survival. Conservation Group submitted comprehensive scoping comments to the Council on July 10, 2020, requesting that the Council comply with the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”), the Delta Reform Act, the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Public Trust Doctrine.<sup>1</sup> For the reasons discussed below, the Council’s DEIR falls short of these mandates.

## II. DEIR DOES NOT COMPLY WITH CEQA

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<sup>1</sup> Conservation Groups incorporate their July 10, 2020 Scoping Comments, available in DEIR Appendix A, Attachment 4-A, by reference as the DEIR fails to address and resolve the issues raised therein.

OR1-3  
cont.

OR1-4

OR1-5



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**A. THE DEIR IMPROPERLY ASSUMES THAT ALL PLAN ELEMENTS WILL BE EFFECTIVE**

The Council continues to rely upon recommendations and performance measures for a significant portion of the Delta Plan. The Council describes the Proposed Project as including :

“An updated Chapter 4 of the Delta Plan narrative, including new and revised policies and recommendations that replace some recommendations that have been removed; [t]hree regulatory appendices . . . ; [f]our technical appendices . . . ; and [a]n appendix updated with new and revised ecosystem performance measures pertinent to the coequal goal of protecting, restoring, and enhancing the Delta ecosystem and indicating performance measures that have been removed . . . .”

DEIR ES-7; 3-6. Yet neither effectively allows the Council to drive the change necessary to attain the co-equal goals of the Delta Reform Act. As the Council is quick to point out, its recommendations cannot be used to determine whether a covered action is consistent with the Delta Plan. October 13, 2021 Respondent Delta-Stewardship Council’s Opposition Brief Responding to All Opening Briefs in *North Coast Rivers Alliance, et al., v. Delta Stewardship Council*, 34-2018-80002898 (“DSC Opposition Brief”), p. 34 (re: recommendations); DEIR 5.1-2 (“recommendations are not legally binding” but the Council hopes they will influence policy anyway). Further, the Council has stated that at least some of its performance measures “do not require, or even recommend, any particular outcomes,” and thus the targets included in those performance measures are not “requirement[s], or even [] recommendations.” (DSC Opposition Brief, p. 33 (first quote), p. 36 (second quote). Instead, the performance measures are merely unenforceable indicators by which the Council hopes it may determine whether its policies and recommendations are effective. *Id.*

At the same time, and counter to the Council’s litigation posture and position, the DEIR “assumes that the proposed Ecosystem Amendment and the rest of the currently adopted Delta Plan would be implemented and achieve their desired outcomes, *regardless of whether the outcomes are expressed as policies or recommendations.*” DEIR ES-7; 3-6; 5.1-2. The Council’s assumption that recommendations and performance measures *will* achieve desired outcomes – and application of that assumption to its CEQA analysis – is fatal to its erroneous and misleading evaluation of the Project and the alternatives thereto. For example, the DEIR suggests that recommendation ER R B (suggesting the use of a “Good Neighbor Checklist”) would minimize impacts that could arise if covered actions are proposed in areas that create conflicts with Williamson Act contracts or would covert farmland to non-agricultural use. DEIR 5.3-16. While the DEIR admits that, even with this checklist, the impacts could remain significant and unavoidable, the assumption that the Council can reduce impacts simply by suggesting – but not requiring – the use of a “Good Neighbor Checklist” is unfounded. DEIR 5.3-22, 5.3-32.

OR1-5  
cont.

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Similarly, the Council sets performance measures that it assumes will be achieved. For example, PM 4.6, establishes various goals for increases in salmon populations. But PM 4.6 merely sets targets to be attained. It does not provide any corrective action that would occur should these targets be missed. DEIR Appendix C, C-4.3 14 to C-4.3 19. Similarly, PM 4.12, which is intended to address land subsidence, also fails to provide any corrective action should the targets not be met. DEIR Appendix C, C-4.3 22-23. Yet the DEIR assumes that these, and other similar performance measures will be implemented and, without more, *will be* successful. DEIR 5.1-4 to 5.1-5. As a practical matter, the Council can only speculate as to the impacts of the Project when so much of it is couched in aspirational recommendations and evaluative analytical tools with no corrective measures and requirements for their implementation.

OR1-6

**B. The DEIR Fails to Address the Ecosystem Amendment's Inconsistency with Applicable Plans and Policies**

The DEIR fails to address the Ecosystem Amendment's inconsistency with applicable plans and policies. *E.g.* CEQA Guidelines § 15125(d). Applicable plans include "water quality control plans," and other regional and statewide environmental plans. *Id.*

**1. The Ecosystem Amendment's Salmon-Doubling by 2065 Objective is Inconsistent with Applicable Plans and Water Quality Standards**

The Ecosystem Amendment's proposal to defer achievement of the salmon-doubling standard for over 50 *more* years is, in a word, unconscionable. It grossly violates federal law. In 1992, Congress passed the Central Valley Project Improvement Act ("CVPIA"), which mandates that "natural production of anadromous fish in the Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991" by 2002 – *nearly 20 years ago*. CVPIA § 3406(b)(1).

OR1-7

Likewise, it violates state law. For a quarter of a century, the State Water Resources Control Board's ("SWRCB's") Water Quality Control Plan for the Bay-Delta ("1995 Bay-Delta Plan") has included a narrative (i.e., non-numerical) flow-related water quality standard mandating that "[w]ater quality conditions shall be maintained, together with other measures in the watershed, *sufficient to achieve a doubling of natural production of chinook salmon from the average production of 1967-1991*, consistent with the provisions of State and Federal Law." 1995 Bay-Delta Plan at 18, emphasis added. This narrative objective requiring the restoration of water quality sufficient to restore and protect salmon and related beneficial uses was replicated in the 2006 and 2018 Water Quality Control Plans for the Bay-Delta.<sup>2</sup> It is required by the Clean

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<sup>2</sup> See Table 3, p. 14 of the 2006 and 2018 Bay-Delta Plans, available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/wq\\_control\\_plans/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/)

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Water Act's anti-backsliding prohibition, 33 U.S.C. § 1342 (o), its implementing regulation, 40 C.F.R. § 131.12, and California's corresponding anti-degradation policy set forth in State Water Resources Control Board Resolution No. 68-16 (October 28, 1968). *Citizens for a Better Environment v. Union Oil Co. of California*, 83 F.3d 1111, 1120 (9th Cir. 1996) (Clean Water Act's anti-backsliding provision applies to state-issued discharge permits); *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* (2012) 210 Cal.App.4th 1255, 1278-1286 (California's anti-degradation policy enforced against Central Valley Regional Board's deficient waste discharge order).

The State of California's half-century-long failure to protect the Delta is well documented, and tragic. Because the State had for decades failed to protect the Delta and its fish and wildlife from excessive diversions and pollution, and the federal Environmental Protection Agency ("EPA") had, in turn, neglected its statutory duty under 33 U.S.C. § 1313(b)-(d) to promulgate adequate Delta water quality standards to remedy the State's failure to do so, *more than 25 years ago* – in 1993 and 1994 – the United States District Court for the Eastern District of California, per the Honorable Lawrence Karlton, in response to litigation prosecuted by the Golden Gate Audubon Society and others (and over the objections of the State of California and a host of water diverters), ordered EPA to promulgate water quality standards for the Delta. On January 24, 1995, those standards became law, and were codified at 40 C.F.R. § 131.37 (60 Fed.Reg 4664 et seq.). The State has never recognized, let alone enforced, these standards even though they were duly promulgated pursuant to federal court orders and the mandate set forth in section 303 of the Clean Water Act. Under the Supremacy Clause of the United States Constitution, and as recognized by Water Code section 13377, the Clean Water Act's more stringent water quality standards preempt California's less protective water quality standards. U.S. Constitution, Art. VI, cl. 2; 33 U.S.C. § 1313(b)-(d); Water Code § 13377. The DEIR fails to discuss or disclose the fact that the Ecosystem Amendment is less protective of the Delta's water quality than the water quality standards set forth in 40 C.F.R. § 131.37.

In 2001, the United States Department of the Interior adopted the Final Restoration Plan for the Anadromous Fish Restoration Program ("Final AFRP Restoration Plan").<sup>3</sup> This plan established objectives that were intended to meet the CVPIA's fish doubling goal, including (1) "improve habitat for all life stages of anadromous fish through provision of [suitable] flows . . . and improved physical habitat," (2) "improve survival rates by reducing or eliminating entrainment of juveniles at diversions," and (3) "improve the opportunity for adult fish to reach

OR1-7  
cont.

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2006wqcp/docs/2006\_plan\_final.pdf and  
[https://www.waterboards.ca.gov/plans\\_policies/docs/2018wqcp.pdf](https://www.waterboards.ca.gov/plans_policies/docs/2018wqcp.pdf).

<sup>3</sup> Available at:  
[https://www.fws.gov/cno/fisheries/CAMP/Documents/Final\\_Restoration\\_Plan\\_for\\_the\\_AFRP.pdf](https://www.fws.gov/cno/fisheries/CAMP/Documents/Final_Restoration_Plan_for_the_AFRP.pdf)

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their spawning habitats in a timely fashion” among others. 2001 Final AFRP Restoration Plan, p. 4. In 2008, the implementing agencies for the AFRP Restoration Plan developed a revised plan of action to implement the fish-doubling goal, recognizing that the existing approach was not working. January 2016 Bureau of Reclamation Final Environmental Impact Statement for Coordinated Long-Term Operation of the Central Valley Project and State Water Project, p. 3-11.<sup>4</sup>

Despite these plans, standards, and goals, due to the State of California’s and other agencies’ continuing failure to recognize and enforce the Clean Water Act’s requirements, instead of doubling, salmon and steelhead populations have continued to plummet. This regulatory failure is indisputable. For this reason, the National Marine Fisheries Service observed in its 2009 Final Biological Opinion for the Long-Term Operations of the Central Valley Project and State Water Project, that “it is far from clear that the agencies . . . have done what is possible and necessary to improve freshwater conditions to help these species weather environmental variability, halt their decline and begin rebuilding in a sustainable way.” NMFS 2009 Biological Opinion, p. 155.<sup>5</sup> The Biological Opinion acknowledged that the Anadromous Fish Restoration Program “effectively ignores the larger system problems that inhibit the natural production of anadromous fish” including dams that cut-off otherwise viable spawning and rearing habitat thus reducing capacity for spawning and rearing, unnatural flow regimes and diversions, levied and channeled river habitat, and degraded conditions for fish caused by exports, degraded water quality, entrainment, and predation. *Id.*, at pp. 155-156 (quoting from Cummins *et al.* Listen to the River: An Independent Review of the CVPIA Fisheries Program (prepared under contract with Circlepoint for the U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service (2008))).

The Clean Water Act, the CVPIA, and the narrative objective in the applicable water quality control plan all demand that conditions be “maintained, together with other measures in the watershed, sufficient to achieve doubling” of chinook salmon. While the water quality control plan does not provide a specific time schedule for doubling to be attained, the deadline set by the CVPIA – 2002 – has long passed.

To address the undeniably perilous state of the Delta, the California Legislature enacted the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta watershed and California’s water infrastructure are in crisis and *existing Delta policies are not sustainable.*”

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<sup>4</sup> Available at [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=23659](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=23659)

<sup>5</sup> Available at: [https://archive.fisheries.noaa.gov/wcr/publications/Central\\_Valley/Water%20Operations/Operations,%20Criteria%20and%20Plan/nmfs\\_biological\\_and\\_conference\\_opinion\\_on\\_the\\_long-term\\_operations\\_of\\_the\\_cvp\\_and\\_swp.pdf](https://archive.fisheries.noaa.gov/wcr/publications/Central_Valley/Water%20Operations/Operations,%20Criteria%20and%20Plan/nmfs_biological_and_conference_opinion_on_the_long-term_operations_of_the_cvp_and_swp.pdf)

OR1-7  
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Water Code § 85001(a), emphasis added. The Legislature found that “‘the Delta’ . . . is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.” Water Code § 85002. “Resolving the crisis requires *fundamental reorganization* of the state’s management of Delta watershed resources.” Water Code § 85001(a), emphasis added. The Delta Reform Act acknowledges the fish doubling goal of the CVPIA, and requires the Council’s Delta Plan to include measures that promote “[c]onditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.” Water Code § 85302(c)(5).

In response to the Delta Reform Act’s mandate, the Council’s 2013 Delta Plan included a wholly inadequate performance measure for fish doubling: “Progress toward achieving the State and federal ‘doubling goal’ for wild Central Valley salmonids relative to 1995 levels. Trends will be derived from long-term salmonid monitoring surveys conducted by the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and others. (ER R2).” 2013 Delta Plan, p. 157. This performance measure was expanded in the Council’s 2018 Amendment, by adding a discussion of the rivers that would be evaluated for salmon doubling. 2018 Delta Plan, Appendix E, p. E-9. But, like the 2013 Delta Plan, this performance measure failed to set a deadline for attaining the fish doubling goal. *Id.*

The current draft Ecosystem Amendment, like those before it, fails to rectify this deficiency. It conflicts with the applicable water quality control plan, the water quality standards for the Delta promulgated by EPA, and the CVPIA. Contrary to governing law and irrefutable science that demand immediate action to save the Delta’s fisheries from extirpation, the proposed Performance Measure 4.6: Doubling Goal for Central Valley Chinook Salmon Natural Production, sets the attainment deadline at 2065, more than *70 years* after the CVPIA established the fish- doubling standard., and more than *60 years* after the CVPIA’s deadline for meeting that standard. DEIR 3.36; Appendix C, C-4.3 14 to C-4.3 19. By deferring compliance nearly one half *century* into the future, the Ecosystem Amendment would render the standard illusory. The Council must address, confront and repudiate this shameful denial of existing law and science.

## **2. The DEIR Fails to Address the Ecosystem Amendment’s Demonstrable Inconsistency with the Council’s Public Trust Obligations**

The DEIR fails to address the Plan Amendment’s demonstrable inconsistency with the Council’s obligation to protect the public trust resources under its jurisdiction. In adopting the Delta Reform Act, the Legislature made clear that the reasonable use and public trust doctrines “shall be the foundation of state water management policy and are particularly important and applicable to the Delta.” Water Code § 85023.

OR1-7  
cont.

OR1-8

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In *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, the court noted that the Public Trust Doctrine mandates “that the state as trustee of the public trust retains supervisory control over the state's waters such that no party has a vested right to appropriate water in a manner harmful to the interests protected by the public trust.” *Id.* at 149, citing *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 445. The court held that the Public Trust Doctrine necessarily requires agencies to “consider water quality for the protection of beneficial uses” when determining whether or not to approve a project. *Id.* at 150-151.

“Public trust easements are traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes.” *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For nearly 50 years it has been settled law in California that public trust values also “encompass[] . . . the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.” *Id.* at 259-260.

The DEIR fails to adequately incorporate and address these paramount principles of California’s public trust, and water quality, law – and the demonstrable inconsistency of the proposed Plan Amendment with them – in its discussion of the existing regulatory setting. Instead, the DEIR implies that only that the SWRCB has public trust obligations, and not the Council. DEIR 5.11-114. CEQA and the Public Trust Doctrine, however, require the Council to do more.

### **3. The PDEIR Fails to Study an Alternative that Would Lessen the Ecosystem Amendment’s Inconsistency with Applicable Law, and thus Fails to Study a Reasonable Range of Alternatives**

The DEIR fails to present a reasonable range of Alternatives, including alternatives that would lessen the Project’s inconsistency with applicable laws, plans, and policies.

The Council declined to consider an alternative that included a more aggressive timeline for Salmon Doubling – which would help reduce the Ecosystem Amendment’s inconsistency with applicable law – or any other performance measure included in the Plan. DEIR 9-6 to 9-7. The Council insists that this is appropriate “because it would not avoid or substantially lessen” the impacts of the Proposed Project. DEIR 9-7. By refusing to consider – let alone adopt – a more aggressive timeline, the Council perpetuates the status quo of species decline, while declaring that decline to be non-cognizable. This legal fiction is counter to the purpose of the Delta Reform Act.

OR1-8  
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OR1-9

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The Council also failed to consider an alternative that sufficiently protects public trust resources. The SWRCB's 2010 Delta Flow Criteria Report established the *minimum* flows necessary to protect public trust resources. Yet neither the SWRCB nor the Council has required compliance with the instream flow levels identified in that report. Instead, they have continued to subordinate restoration and protection of public trust resources to satisfying the extractive water demands of diverters. The Council's Ecosystem Amendment ignores the Delta Flow Criteria Report mandated by the Delta Reform Act and relies entirely on the SWRCB's water quality control planning process for the purposes of the Delta Plan. *See* DEIR 3-8 (Recommendation ER R1). By relegating the 2010 Delta Flow Criteria Report to a symbolic but unimplemented exercise left to collect dust, the Council fails to incorporate the information necessary to protect public trust resources where feasible in implementing the Delta Plan. The Council should have, instead, utilized the 2010 Delta Flow Criteria Report to develop an alternative designed to implement the flow rates identified in that report as necessary to restore and protect imperiled public trust resources.

OR1-9  
cont.

### III. THE ECOSYSTEM AMENDMENT DOES NOT SATISFY THE COUNCIL'S PUBLIC TRUST DOCTRINE OBLIGATIONS

As discussed above, Water Code section 85023 commands that "the longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta."

Compliance with CEQA does not excuse the Council from performing its duties under the Public Trust Doctrine. Although satisfying its CEQA obligations "may assist an agency in complying with its duties under the public trust doctrine . . . [.] CEQA review of a project does not necessarily or automatically satisfy the agency's affirmative duties to take the trust into account and protect public trust uses whenever feasible." *San Francisco Baykeeper Inc. v. State Lands Com.* ("Baykeeper II") (2018) 29 Cal.App.5th 562, 571. "[A] public trust use is not any use that may confer a public benefit, but rather a use that facilitates public access, public enjoyment, or public use of trust land." *Id.* at 570. Consequently, uses of public trust resources for commercial purposes that do not facilitate public enjoyment of the resource are not public trust uses protected by the public trust doctrine. *San Francisco Baykeeper, Inc. v. State Lands Com.* ("Baykeeper I") (2015) 242 Cal.App.4th 202, 235-238. In deciding whether an activity impermissibly harms the public trust resource, "the determinative fact is the impact of the activity on the public trust resource." *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App.5th 844, 859.

OR1-10

The Public Trust Doctrine "imposes an obligation on the state trustee [here, the Council] 'to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.'" *Baykeeper II*, 29 Cal.App.5th at 569; *Baykeeper I*,

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242 Cal.App.4th at 234; *National Audubon*, 33 Cal.3d at 441. The Delta and its tributaries are public trust resources that must be protected. The Public Trust Doctrine “impose[s] an affirmative duty” on the Council “to take the public trust into account” before authorizing the continued degradation of already imperiled waterways. *Baykeeper II*, 29 Cal.App.5th at 570-571. Although “the state trustee has broad discretion . . . to promote [one public trust use] over other legitimate trust uses,” it does not have discretion to promote *non*-public trust uses such as consumptive extraction of water over “legitimate trust uses” such as fish and wildlife. *Id.* at 577.

Therefore, as the Council considers the Ecosystem Amendment it must, in compliance with Water Code section 85023, reject vague and unenforceable targets, and repudiate endlessly deferred deadlines, that allow continued destruction of public trust resources. Long overdue restoration of ecosystem health and thriving populations of fish and wildlife must not be sacrificed on the altar of unsustainable diversions of water for consumptive uses.

By irresponsibly and unlawfully deferring the already long-passed statutory deadline for attaining the salmon doubling standard, the Ecosystem Amendment as currently proposed hastens the extinction of California’s historic salmon runs. A more stunning example of openly defying the Public Trust Doctrine can scarcely be imagined. Contrary to CEQA and the Public Trust Doctrine, the DEIR ignores, rather than discloses and-addresses, these deficiencies.

### III. CONCLUSION

The Council must act to protect, restore, and enhance the Delta ecosystem as well as provide a more reliable water supply for the State. Water Code § 85054. To that end, it must adopt a Delta Plan that provides quantified standards for protecting, restoring, and enhancing the Delta ecosystem. Unfortunately, the proposed Ecosystem Amendment fails to rectify the Delta Plan’s profound deficiencies. It fails to provide quantified standards to restore natural flows and reverse the environmental degradation caused by the CVP and SWP. And for these reasons, it fails to comply with the Public Trust Doctrine – the doctrine that animates the Delta Reform Act and serves as the “foundation of state water management policy.” Water Code § 85023. For similar reasons, the DEIR violates CEQA because it fails to address and propose measures and alternatives to avoid or reduce those environmental impacts.

The Delta Reform Act, Clean Water Act, CEQA and the Public Trust Doctrine all require the Council to consider feasible alternatives that accomplish the Delta Reform Act’s co-equal goals, protect and restore the Delta’s public trust resources, and avoid or reduce to insignificance the Delta Plan’s potentially significant environmental impacts. The Council’s proposed Ecosystem Amendment fails to meet these requirements. The Council’s DEIR similarly fails to

OR1-10  
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OR1-11

OR1-12

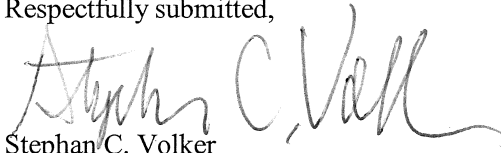


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recognize and address the Ecosystem Amendment's deficiencies as identified above, and consider a reasonable range of alternatives that would remedy those deficiencies.

↑ OR1-12  
cont.

Respectfully submitted,



Stephan C. Volker

Attorney for Pacific Coast Federation of Fishermen's Associations,  
the Institute for Fisheries Resources, San Francisco Crab Boat  
Owners Association, and North Coast Rivers Alliance

**OR1 Conservation Groups (Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, North Coast Rivers Alliance)**

**Responses to Comments from OR1 Conservation Groups (Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, North Coast Rivers Alliance)**

**OR1-1:**

This comment summarizes the objectives of the Proposed Project presented in the Draft PEIR and comments on the effectiveness of these objectives to protect and restore the Delta. It is noted and will be forwarded to the Council for their consideration.

**OR1-2:**

This comment summarizes concerns over the health of the Delta. It is noted and will be forward to the Council for their consideration.

**OR1-3:**

This comment provides information on the Conservation Groups.

**OR1-4:**

The Draft PEIR was prepared in compliance with CEQA as described in Chapter 1, *Introduction*, of the Draft PEIR. Subsection 1.3, Environmental Review and Approval Process, of Draft PEIR Chapter 1, *Introduction*, describes the environmental review and approval process for preparing the Draft PEIR, including publication and circulation of the NOP, consistent with CEQA section 15082, to obtain suggestions and information from responsible, trustee, and involved federal agencies and members of the public, including organizations and individuals, on the scope and content of the environmental analysis to be included in the proposed Ecosystem Amendment PEIR. The NOP, and comments received in response to the NOP, were included in Appendix A of the Draft PEIR. The information provided was considered in preparing the Draft PEIR. The introduction section of each technical section in Chapter 5 identifies the topics addressed in response to comments on the NOP.

See responses to OR1-5 through OR1-11 for responses to comments addressing plan consistency and the public trust doctrine.

**OR1-5:**

See Topical Response 2: Approach to the Environmental Analysis for explanation of how the analysis in the PEIR assumes that the proposed Ecosystem Amendment, as well as the rest of the Delta Plan as previously adopted, would be implemented and achieve their desired outcomes regardless of whether the outcomes are expressed as policies or recommendations.

New Delta Plan Recommendation ER R"B", provided in Chapter 3, *Project Description*, recommends the use of the Good Neighbor Checklist (included in Draft PEIR Appendix C, Text of Proposed Delta Plan Ecosystem Amendment, Appendix Q2,

p. C-3.4 1) to coordinate restoration projects with adjacent uses. This recommendation is intended to avoid or reduce conflicts with existing uses, including uses such as agriculture and recreation.

The Delta Reform Act establishes the authority of the Delta Stewardship Council and specifies specific roles and responsibilities. The Council is not required to mandate consideration of all topics covered in the Good Neighbor Checklist. Rather, the Council has developed specific mitigation measures (Revised Mitigation Measures 19-1(f) and (g), 6-2(a) through (d), and 7-1(a) through (h)) that address a subset of these issues. Pursuant to G P1(b)(2), State and local agencies proposing covered actions must require these measures to be included in the covered action, if they are applicable and feasible, or propose substitute measures that are equally or more effective than these measures.

As described on Draft PEIR page 5.2-21, covered actions to be implemented in response to the proposed Ecosystem Amendment in the Primary and Delta Watershed Planning Areas would be required to implement Revised Mitigation Measure 7-1(a) through (h) to reduce impacts associated with the conversion to nonagricultural use of Farmland, land zoned for agriculture, and land subject to a Williamson Act contract. Implementation and enforcement of Revised Mitigation Measure 7-1(a) through (h), or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council and can and should be adopted by that other agency; therefore, this impact could remain significant and unavoidable.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

#### **OR1-6:**

As described in Chapter 2, *Delta Plan Background*, on page 2-15, the Delta Reform Act requires the Delta Plan to include performance measures that enable the Council to track progress in meeting the objectives of the Delta Plan, using quantified or otherwise measurable targets associated with achieving the Delta Plan objectives. Wat. Code section 85300(c) requires that the Council review the Delta Plan at least once every five years and revise it as the Council deems appropriate. Consequently, the Delta Plan is periodically updated in response to changing circumstances and conditions in the Delta (see page 2-5).

The Proposed Project would refine and add performance measure targets, metrics, and baseline conditions associated with proposed new and revised policies and recommendations within Delta Plan Chapter 4. As called for in the Delta Reform Act, the Council uses these performance measures to track progress in meeting the objectives of the Delta Plan and to assist in determining whether to make revisions to the Delta Plan.

As described in Draft PEIR Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-1, the Draft PEIR assumes that the Delta Plan and the Proposed Project would be implemented and achieve their desired outcomes, regardless of whether the outcomes are expressed as policies, recommendations, or performance measures. Accordingly, the Draft PEIR evaluates the potential impacts of types of projects that the

Delta Plan, as a whole and as amended by the Proposed Project, would encourage and promote in the Primary and Extended Planning Areas. Once proposals for specific projects are proposed by other entities in response to the proposed Ecosystem Amendment, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

**OR1-7:**

The Draft PEIR evaluates potential effects to fishery resources that would result from implementation of actions by other entities in response to the Proposed Project (see Section 5.5, *Biological Resources - Aquatic*, Impacts 5.5-1 and 5.5-2). Potential changes to water quality that would result from implementation of actions by other entities in response to the Proposed Project are evaluated in Section 5.11, *Hydrology and Water Quality*, Impact 5.11-1. As stated above, the analysis in the Draft PEIR assumes projects and activities would be implemented in compliance with applicable regulations and laws.

In response to the comment that the proposed Ecosystem Amendment is not consistent with the CVPIA and Bay-Delta Plan and that the Proposed Project is less protective of fisheries and water quality, the proposed Ecosystem Amendment also proposes performance measures to track increased habitat restoration and fish passage remediation to protect fisheries and water quality which would be protective of fisheries. The doubling goal performance measure, like all performance measures, has aspirational yet feasible targets. That is why the target date is 2065, which is 15 years after 2050 target dates for the habitat restoration and fish passage performance measures to meet their targets (15 years equates to five generations of salmon to demonstrate stability of the populations). The proposed Ecosystem Amendment defers to the adoption and implementation by the State Water Resources Control Board (SWRCB) of the most current and future updates to Bay-Delta Plan Update to meet water quality objectives for protecting native fishes. The CVPIA was enacted in 1992; however, salmon natural production levels decreased after 1992. The 1992–2015 average was 381,368 compared to the 1967–1991 baseline average of 497,054 (Draft PEIR Attachment C, Figure 1, pp 476-478). The SWRCB charged an Independent Scientific Advisory Panel with developing methods for formulating biological goals for the Bay-Delta Plan, and the findings of the Scientific Advisory Panel were incorporated into proposed revisions to PM 4.6. The proposed performance measures also were reviewed by subject matter experts and the Delta Independent Science Board to ensure the best available science was used for creating the metrics and targets.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review, and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**OR1-8:**

As stated in Chapter 2, *Delta Plan Background*, on page 2-5, the Public Trust Doctrine is applicable to the Delta watershed. The coequal goal of protecting, restoring, and enhancing the Delta ecosystem is consistent with the Public Trust Doctrine and, among other things, promotes and protects fishing, recreational, and ecological public trust uses in the Delta watershed. Achieving the coequal goals is the primary and fundamental purpose of the Delta Plan (see page 2-1).

Information about the Public Trust Doctrine and public trust resources is also included in the Draft PEIR on page 5.11-114. The comment does not describe any inconsistency between the Proposed Project and the Public Trust Doctrine. Because projects implemented in response to the proposed Ecosystem Amendment by other entities would be implemented in compliance with relevant federal, State, and local laws, regulations and ordinances, public trust resources would be protected. In addition, the Draft PEIR evaluates impacts to public trust resources such as aquatic biological resources (Section 5.5), hydrology and water quality (Section 5.11), and recreational resources (Section 5.15).

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review, and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances.

**OR1-9:**

As described in Draft PEIR Chapter 9 *Alternatives*, the principles used to guide selection of the alternatives analyzed in the Draft PEIR are provided by section 15126.6 of the CEQA Guidelines, which specifies that an EIR must do all of the following:

- ◆ Describe a reasonable range of potentially feasible alternatives to the project that could feasibly attain most of the basic objectives of the project;
- ◆ Consider alternatives that could reduce or eliminate any significant environmental impacts of the proposed project, including alternatives that may be costlier or could otherwise impede the project's objectives; and
- ◆ Evaluate the comparative merits of the alternatives.

As described in Draft PEIR Chapter 9 *Alternatives*, the focus and definition of the alternatives evaluated in this PEIR are governed by the "rule of reason," in accordance with section 15126.6(f) of the CEQA Guidelines. That is, the range of alternatives presented in this Draft PEIR must permit a reasoned choice by the Council, CEQA Guidelines section 15126.6(e)(1)-(2) requires that an EIR evaluate a "No-Project Alternative," identify an "environmentally superior alternative" other than the no project alternative, and identify alternatives that were considered during the scoping process but were eliminated from detailed consideration (section 15126.6(c)). Draft PEIR Chapter 9 subsection 9.2, Alternatives Considered and Screening Criteria, describes the development of a reasonable range of alternatives to the Proposed Project, the

method used to screen the alternatives, and the alternatives considered but eliminated from detailed consideration in this document (Draft PEIR pages 9-2 through 9-9). Draft PEIR subsection 9.2.3, Alternatives Considered but Rejected for Further Evaluation, considered an Accelerated Timeline Alternative that would shorten the timescale for implementing the performance measures identified in the Proposed Project (Draft PEIR pages 9-6 through 9-7). As explained on page 9-7 of the Draft PEIR, this alternative was rejected for further consideration in the PEIR because, although this alternative may accelerate implementation of natural community restoration and potentially lead to quicker beneficial effects, the potential adverse effects of this alternative are anticipated to be similar or more severe compared to the Proposed Project.

CEQA Guidelines section 15126.6(a) requires every EIR to describe and analyze a “range of reasonable alternatives” that “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” “The range of alternatives required in an EIR is to set forth only those alternatives necessary to permit a reasoned choice regarding the proposed project.” (CEQA Guidelines section 15126.6(f)). This range is determined, in part, by the particular scope and purpose of the project under review. The selection of alternatives must also be guided by CEQA’s fundamental goal of environmental protection. See Pub. Resources Code sections 21000, 21001.

Draft PEIR subsection 9.2.1 Development of Reasonable Range of Alternatives (Draft PEIR pages 9-2 through 9-5) contains additional information on the development of the alternatives to the Proposed Project, based on information gathered during the development of the preliminary public review draft of the Ecosystem Amendment and during the Draft PEIR scoping process.

For a discussion of consistency with the Public Trust Doctrine, see response OR1-8.

See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**OR1-10:**

For a discussion of consistency with the Public Trust Doctrine, see response OR1-8. See response OR1-7 for discussion of the salmon doubling standard.

**OR1-11:**

For a discussion of consistency with the Public Trust Doctrine, see response OR1-9. See response OR1-10 for discussion of selection of a reasonable range of alternatives. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**OR1-12:**

See responses OR1-1 through OR1-11.



Via email: [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

November 30, 2021

Harriet Ross, Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

**Subject: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)**

Dear Ms. Ross:

This letter originates from lands of the Lisjan Ohlones in the East Bay, of Yokut lands in the Stockton area, and Miwok lands of the Delta further north. These lands represent the great connections of the San Francisco Bay and Delta estuary, the kinds of connections that Draft Chapter 4 Ecosystem Amendments to the Delta Plan strive to represent. We at Restore the Delta strive to be mindful of these connections in our advocacy work. We respectfully remind the Delta Stewardship Council (DSC) of this California tribal history because we have had to raise yet again the need for the DSC to complete a full analysis of California tribal history, culture, and current needs in relation to the Delta Plan Ecosystem Amendment PEIR, and to avoid erasure of the history and continuing contributions of California tribes to the Delta as the unique place it is.

Restore the Delta (RTD) is a grassroots campaign of residents and organizations committed to restoring the Sacramento-San Joaquin Delta so that fisheries, communities, and family farming can thrive there together again; so that water quality is protected for all communities, particularly environmental justice communities; and so that Delta environmental justice communities are protected from flood and drought impacts resulting from climate change while gaining improved public access to clean waterways. Ultimately our goal is to connect communities to our area rivers and to empower communities to become the guardians of the estuary through participation in government planning and waterway monitoring. RTD advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the well-being of their communities, and water sustainability policies for all Californians.

OR2-1

OR2-2

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

This letter contains an overview of our comments on the Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR) as well as an attachment providing additional specific comments on impact analyses of the PEIR as we had time for. We appreciate the opportunity to comment, and wish the Delta Stewardship Council well as it eventually implements the Delta Plan Ecosystem Amendment.

OR2-2  
cont.

### General Comments

RTD commented twice already about the Delta Plan Ecosystem Amendment—in January and July 2020, providing comments directly on an early draft Amendment, and later on the Notice of Preparation of the PEIR. We have attached these letters to this one.<sup>1</sup>

OR2-3

As mentioned in the opening paragraph, the DSC continues to erase Indigenous peoples' presence from the Delta, principally by omission of their known presence in the Delta in the early 19th century. We submitted evidence of their presence in our earlier letters, but this evidence has not been incorporated into Figure 4-1 in either the 2013 Delta Plan, the synthesis papers of 2018, the draft Ecosystem Amendment of early 2020, nor this most recent version contained in Appendix C, Section 2, of the Delta Plan Ecosystem Amendment PEIR. Humans have been in the Delta since time immemorial, so the pairing of these two maps erases Indigenous peoples' presence as it tries to make a fallacious comparison.

OR2-4

Elsewhere in the PEIR, we appreciate that the Delta Stewardship has begun to incorporate the mandate of the Delta Reform Act of 2009 (Act) to reduce reliance on the Delta for California's future water needs into the purpose of the Ecosystem Amendment. It's a little convoluted the way it is presented, but DSC recognizes that the co-equal goals are to be achieved with this Ecosystem Amendment "in a manner that...[f]urther the statewide policy to reduce reliance in the Delta in meeting the state's future water supply needs through regional self reliance." As the DSC is aware, RTD and others interpret the reduced Delta reliance mandate as either co-equal with or even prior to the co-equal goals of the Act. The co-equal goals are in tension. They are zero-sum with respect to each other; ***you cannot increase water supply reliability and recover ecosystems in the Delta without reducing reliance on the Delta for water supply and letting more water flow through the system*** if ecosystem policies and recommendations of the Delta Plan are to be achievable. We observe, however, that the DSC's placement of the reduced-Delta-reliance policy mandate occurs only in Chapters 1 and 3 of the PEIR in relation to the purpose of the amendment. It does not occur in the Amendment language itself. We continue to encourage the DSC to further integrate the reduced Delta reliance policy mandate into its communications, policies, and programs under the Act because that is where the mandate belongs.

OR2-5

<sup>1</sup> The July 2020 letter attached the January letter, so they are included as one attachment.



*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

It is now almost December 2021, and the State Water Resources Control Board continues to delay updating important parts of its own Bay-Delta Plan, namely flow objectives. This is significant because the DSC hitched its Chapter 4 Ecosystems ER P1 policy to the Board's own flow objectives for review of covered actions and continues to do so in this Ecosystems Amendment. It means that the DSC has acceded to a policy of delay in the face of continued deterioration of Delta ecological, hydrological, and water quality conditions—many of which are driven by flows into and through the Delta. Over a year ago, we wrote to the DSC:

*If the DSC truly cares about doubling the populations of all salmon runs and Central Valley steelhead, its appointed members and executive director should be lobbying Governor Newsom to abandon the voluntary agreements—which are a delaying tactic, not a real, honest thing—and direct the SWRCB to complete its Sacramento River Basin Bay-Delta Plan flow objectives and environmental review process post haste.<sup>2</sup>*

More than year has passed since we wrote these words. Since the Voluntary Agreements process began in December 2018, it has been three years of delay on the Water Board's part. We continue to doubt this Amendment will achieve a doubling of salmonid populations, but we also continue to appreciate that the DSC continues the policy and the performance measure (PM 4.6) toward this end. This is an important matter for California Indian Tribes that revere salmonids in their culture and spiritual lives, and for the state's commercial fishing industry. We applaud the goal and the performance measure and continue to wish you Godspeed achieving it.

In our last letter, we commented that it is contrary to the Act that the Delta Plan amendment has no policy to reduce the problems caused by existing nonnative invasive species as threats and stressors to existing ecosystem management and future ecosystem restoration investments without adequate flows. The Delta Science Program has been remiss about prioritizing research into flow and non-flow means of controlling *Potamocorbula amurensis* (*P. amurensis*), a voracious nonnative invasive clam that not only can consume vast quantities of phytoplankton and other forms of primary biomass production, but also bioaccumulate toxic concentrations of biologically available selenium in the water column of open waters in the Delta. An entire Delta Regional Ecosystem Restoration (DRERIP) conceptual model was devoted to its ecosystem relationships and yet no control program has been initiated by the DSP. This is something the DSC could actually do something about. We continue holding to the position that Policy ER P5 is inadequate to the task of addressing existing nonnative invasive species. It should be strengthened by adding existing nonnative invasive species to its purview, and ecosystem restoration projects appearing before the DSC as “covered actions” should demonstrate how they will mitigate or eliminate existing

<sup>2</sup> Letter of Barbara Barrigan-Parrilla and Tim Stroshane, Restore the Delta, to Harriet Ross, Assistant Planning Director, Delta Stewardship Council, “Delta Plan Ecosystem Amendment NOP,” July 10, 2020, p. 11. Emphasis in original. See Attachment 2 to this letter.

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

voracious invasive species like *P. amurensis* as part of their scopes, or be found inconsistent with the Delta Plan.

We provide more specific comments on the draft PEIR in Attachment 1 to this letter. Thank you for the opportunity to comment, and for your consideration of our comments on the Delta Plan Ecosystem Amendments and its Program Environmental Impact Report. If you have questions about this letter, contact Barbara Barrigan-Parrilla (209-479-2053, or [barbara@restorethedelta.org](mailto:barbara@restorethedelta.org)) or Tim Stroshane (510-847-7556, or [tim@restorethedelta.org](mailto:tim@restorethedelta.org)). We look forward to working with you on Adaptation Strategy development in Phase 2.

Sincerely,



Barbara Barrigan-Parrilla  
Executive Director



Tim Stroshane  
Policy Analyst

Attachments:

1. Specific Comments from Restore the Delta
2. Restore the Delta Letter of July 10, 2020

cc: Susan Tatayon, Chair, Delta Stewardship Council  
Mike Gatto, Member  
Maria Mehranian, Member  
Virginia Madueño, Member  
Daniel Zingale, Member  
Christy Smith, Member  
Frank Damrell, Member  
Malissa Tayaba, TEK Director, Shingle Springs Band of Miwok Indians  
Caleen Sisk, Spiritual Leader and Tribal Chief, Winnemem Wintu Tribe  
Gary Mulcahy, Government Liaison, Winnemem Wintu Tribe  
Kelley Taber, Somach & Simmons  
Thomas H. Keeling, The Freeman Firm  
S. Dean Ruiz, South Delta Water Agency  
John Herrick, South Delta Water Agency  
Dante Nomellini, Central Delta Water Agency  
Osha Meserve, Soluri Meserve LLC  
Roger Moore, Law Office of Roger B. Moore  
John McManus, Golden State Salmon Association  
Kimberly Warmsley, District 6, Stockton City Council  
Davis Harper, The Climate Center

↑ OR2-8  
| cont.

OR2-9

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

Ann Rogan, The Edge Collaborative  
Darryl Rutherford, Reinvent South Stockton Coalition  
Michelle Ghafar, Earthjustice  
Nina Robertson, Earthjustice  
Dillon Delvo, Little Manila Rising  
Matt Holmes, Little Manila Rising  
Irene Calimlim, Greenlining the Hood  
Jasmine Leek, Third City Coalition  
Tama Brisbane, With Our Words  
Jonas Minton, Planning & Conservation League  
Bob Wright, Sierra Club California  
Bill Jennings, California Sportfishing Protection Alliance  
Chris Shutes, California Sportfishing Protection Alliance  
Carolee Krieger, California Water Impact Network  
Michael B. Jackson, California Water Impact Network  
Barbara Vlamis, AquAlliance  
Regina Chichizola, Save California Salmon  
Tom Stokely, Save California Salmon  
Patricia Schifferle, Pacific Advocates  
Brandon Dawson, Sierra Club California  
Adam Keats, Law Office of Adam Keats, PC  
Doug Obegi, NRDC  
Kate Poole, NRDC  
Jon Rosenfield, San Francisco Baykeeper  
Gary Bobker, The Bay Institute  
Mike Conroy, PCFFA

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

## Attachment 1 Specific Comments from Restore the Delta

### 1. Harmful Algal Blooms (HABs)

The season during which HABs occur has lengthened since the initial Delta Plan in 2013, their number has increased, and their geographic range in the Delta has spread. The Draft PEIR recognizes that HABs exist and that they are a problem, but in the absence of specific projects to evaluate with reference to HABs-friendly conditions, we have little comment on. However, Policy ER P1 (“Create More Natural Functional Flows”) must be stalwart when it comes to evaluating not just ecosystem restoration projects, but any covered action whose consistency with the Delta Plan must be determined with reference to Plan policies.

HABs need light, nutrients (principally phosphorus and nitrogen), warm water, and long residence times of water (i.e., slow or stagnant flow conditions) to bloom and spread. The Ecosystem Amendment’s retention of ER P1 will keep attention focused on whether any covered action will decrease flows or otherwise worsen water quality in ecosystem restoration opportunity sites. One such covered action to come before the DSC in the near future is the Delta Conveyance Facility proposal, about which we will have more to say in our discussion of Cumulative Impacts below.

OR2-10

### 2. Mobilizing Methylmercury from Project Construction Activities and Subsistence Fishing

Because of legacy impacts of hydraulic mining in the Sierra Nevada catchments of the Delta Watershed, toxic contaminants like mercury were deposited in Delta and Yolo Bypass sediments for decades, and remain there. Construction activities will disturb channel and wetland sediments that likely contain mercury. These sediments contain bacteria which readily convert mercury to an organically consumable form through the chemical process of methylation (in the absence of oxygen) into “methylmercury.”

The PEIR does recognize ongoing presence of legacy methylmercury toxicity and ecological pathways by which it could be mobilized by restoration activities, and that mitigation strategies are available for removal or sequestration of methylmercury.

OR2-11

### 3. Carbon Sequestration and Carbon Capture Storage

The Draft PEIR recognizes the importance of carbon sequestration as an important climate-change-fighting tactic. Net carbon sequestration will be very important for the Delta Plan to contribute to our state and society’s efforts to reduce emissions of greenhouse gases and slow heating of Earth in both the near and long terms.

One non-ecosystem restoration strategy for reducing the abundant greenhouse gas carbon dioxide (CO<sub>2</sub>) in the atmosphere is to inject it underground under pressure into relatively stable, porous geologic rock strata, where CO<sub>2</sub> would be entombed, hopefully permanently. The techno-geologic concept for this process is known as “carbon capture

OR2-12

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

storage” (CCS). CCS, it appears, is coming to the Delta, and RTD is still studying and evaluating this geo-engineering tactic for reducing CO<sub>2</sub> in the atmosphere. Industrial developers of CCS would be paid by industrial dischargers of CO<sub>2</sub> to receive, inject, and store the gas.

There are important benefits from CCS. The primary one is that it could mimic geologic processes that have stored carbon in rock for literal eons, and with enough time, CCS supporters and researchers believe that CO<sub>2</sub> could be incorporated into the rock on a more or less permanent basis, sequestered away from Earth’s atmosphere. Scientists from Lawrence Livermore National Laboratory recently told a Restore the Delta webinar audience that “the Delta has world class geology” for CCS, and for that reason is the subject of considerable interest from industry.<sup>3</sup>

The PEIR is silent on the potential environmental impacts of such technology. We recognize that interest in the Delta as a CCS zone is quite recent and that this PEIR’s scope is shy of this issue. In particular, Section 5.9 on Geology and Seismicity contains no reference to either carbon sequestration or CCS potential. But we raise it to indicate that the DSC should activate the Delta Independent Science Board on CCS in the Delta in the very near future, so that our region’s best scientific minds engage with the topic and with the public about this looming issue. Wherever CCS technology has been poorly regulated, there have been industrial mishaps with impacts ranging from animal suffocation to acidification of local rivers and streams.

CCS wells require at least 100 years of monitoring and emergency response plans should leakage occur. Government agencies responsible for Delta management must create a framework to protect the estuary and its communities from any negative water and air quality impacts from mechanical carbon sequestration projects.

#### **4. Small Community Water Systems**

Section 5.11 of the PEIR addresses hydrology and water quality impacts of the proposed Ecosystem Amendment to the Delta Plan. We found no mention of small community water systems in the setting discussion of this section, even though there are over 70 such systems in the Delta alone (and thousands statewide). The California Department of Water Resources studied small community water systems in 2020, and the DSC included discussion of them in its recent Delta vulnerability assessment of its “Delta Adapts” process for addressing climate change. To the extent that ecosystem restoration projects affect local hydrology, groundwater percolation, and water quality changes to local drinking water supplies, the Final PEIR should include discussion of

<sup>3</sup> For a presentation and discussion of the benefits and risks of carbon capture and storage technology and experience, see RTD’s webinar recording from October 21, 2021 at <https://www.youtube.com/watch?v=eCxsFYJMW3s>, also accessible via <https://www.restorethedelta.org/2021/10/25/icymi-watch-our-dine-learn-webinar-on-carbon-sequestration-in-the-delta/>. It runs about 90 minutes.

OR2-12  
cont.

OR2-13

*Re: Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR)*

potential impacts and reach an impact conclusion with respect to small community water systems in the Delta.

↑ OR2-13  
| cont.

## **5. Cumulative Impacts**

The cumulative impacts discussion in Chapter 7 was inadequate, in our opinion. Little effort was made to sort the cumulative projects list by what type of general impact(s) each cumulative program, project, or policy has or will have on the Delta. Because the list is treated like an olio basket, it gives readers the impression that each item in the list is generally equivalent to every other. The Delta Conveyance Facility (DCF) project, however, is not like any other project. Like its recent predecessor, California WaterFix, the DCF would radically change the hydrologic regime in the Delta, lowering flows in spring and summer downstream of its North Delta intakes, and stagnating water quality downstream.

| OR2-14

RTD became convinced of the DSC's role and of Delta Plan policies in protecting the Delta from wholesale destruction of its hydrologic and water quality regimes (beyond what deterioration has already occurred under the failed existing water quality and flow objectives of the State Water Board's D-1641 and 2006 Bay-Delta Plan) when both Delta Plan policies WR P1 and ER P1 were key to the DSC's determination that California WaterFix as proposed was inconsistent with Delta Plan policies. We appreciate that, despite the lax treatment of the DCF in this PEIR's cumulative impacts analysis, that important Delta Plan policies like these remain in place when the DCF reaches the DSC as a covered action.

## **6. Alternatives**

We agree that the Ecosystem Amendment as the Proposed Project represents the preferred alternative. While Alternative 3 was chosen by the DSC as the environmentally superior alternative, it halves the total amount of acreage that could be restored under the Proposed Project. This makes the Proposed Project in our view superior and more socially and ecologically desirable than Alternative 3.

| OR2-15

**OR2 Restore the Delta****Responses to Comments from OR2 Restore the Delta****OR2-1:**

The Council recognizes the importance of tribal history, culture, and engagement in Council activities. In addition to outreach with tribes conducted as part of the CEQA process and development of the PEIR as discussed in Response T1-1, the Council continues to work toward better integrating tribal involvement into its ongoing activities. Among the Council's Initial steps are including a tribal representative on the DPIIC Restoration Subcommittee, which is charged with identifying and removing barriers to implementation of ecosystem restoration projects in the Delta; interviewing tribal interests to inform the development of an Environmental Justice Issue Paper; and beginning research to explore current efforts and opportunities to interweave Traditional Knowledge with Western Science in Bay-Delta management and restoration.

**OR2-2:**

This comment provides background information on Restore the Delta. See responses to the remaining comments in this comment letter.

**OR2-3:**

The commenter previously commented on both the preliminary public review draft of the Ecosystem Amendment and the NOP for the Proposed Project PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

Subsection 1.3, Environmental Review and Approval Process, of Draft PEIR Chapter 1, *Introduction*, describes the environmental review and approval process for preparing the Draft PEIR, including publication and circulation of the NOP, consistent with CEQA section 15082, to obtain suggestions and information from responsible, trustee, and involved federal agencies and members of the public, including organizations and individuals, on the scope and content of the environmental analysis to be included in the proposed Ecosystem Amendment PEIR. The NOP and comments received were included in Appendix A of the Draft PEIR. The information provided was considered in preparing the Draft PEIR. Each technical section in Chapter 5 notes in the introduction if comments were received in response to the NOP that were taken into consideration.

**OR2-4:**

This comment addresses the proposed amendment and states that the long presence of humans in the Delta, including indigenous tribes, are not reflected in Figure 4-1 in Appendix C of the Draft PEIR (see page 4-11). Figure 4 is illustrative and, as the caption states, portrays the scale of changes in Delta waterways (i.e., waterways including bays, tidal channels and flats, rivers lakes and intermittent streams, and brackish and freshwater tidal march habitat) between the early 1800s and modern times. It is not intended to reflect human presence in either period.

The presence of humans in the Delta, indigenous cultures, and Euro-American settlement is acknowledged on page 4-9 in Appendix C of the Draft PEIR. See response T1-3 for a description of tribal knowledge that reflects the long presence of indigenous cultures with ties to the Delta.

**OR2-5:**

As described in Draft PEIR Chapter 2, *Delta Plan Background*, the Delta Reform Act requires the Council to develop and adopt the Delta Plan, a legally enforceable, comprehensive, long-term management plan for the Delta to further the coequal goals (Wat. Code sections 85001(c), 85054, 85059, and 85300(a)). Furthering the coequal goals is the primary and fundamental purpose of the Delta Plan. As presented on page 3-1 in Chapter 3, *Project Description*, CEQA requires that an EIR contain a statement of the objectives sought by the proposed project that should include the underlying fundamental purpose of the project (CEQA Guidelines section 15124(b)).

As presented on page 3-2, the objectives of the Proposed Project include the objectives common to the Delta Plan as a whole, including the proposed Ecosystem Amendment, which are derived from the Delta Reform Act. Accordingly, the project's objectives are to further the achievement of the coequal goals in Wat. Code section 85054 and the eight "inherent" objectives in Wat. Code section 85020 in a manner that includes furthering the statewide policy to reduce reliance on the Delta in meeting the state's future water supply needs through regional self-reliance (Wat. Code section 85021).

See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for additional information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**OR2-6:**

This comment references the role of the Delta Stewardship Council, the objectives of the Ecosystem Amendment, and requests that the Council advocate for abandonment of the "voluntary agreements" process involving the State Water Resources Control Board. It does not address the adequacy or content of the Draft PEIR.

The Delta Reform Act of 2009 establishes the authority of the Council and its roles and responsibilities. The Bay-Delta Plan and establishment of flow objectives is an authority granted to the State Water Resources Control Board.

In response to the specific comment on doubling populations of all salmon runs and Central Valley steelhead, the proposed Ecosystem Amendment proposes increasing habitat restoration and fish passage remediation to protect fisheries and water quality which will be protective of fisheries. The doubling goal performance measure, like all performance measures, has aspirational yet feasible targets. That is why the target date is 2065, which is 15 years after 2050 target dates for the habitat restoration and fish passage performance measures to meet their targets (15 years equates to five generations of salmon to demonstrate stability of the populations). The proposed Ecosystem Amendment defers to the adoption and implementation by the State Water Resources Control Board (SWRCB) of the most current and future updates to Bay-Delta Plan Update to meet water quality objectives for protecting native fishes. The CVPIA



1 was enacted in 1992; however, salmon natural production levels decreased after 1992.  
2 The 1992–2015 average was 381,368 compared to the 1967–1991 baseline average of  
3 497,054 (Draft PEIR Attachment C, Figure 1, pp 476-478). The SWRCB charged an  
4 Independent Scientific Advisory Panel with developing methods for formulating  
5 biological goals for the Bay-Delta Plan, and the findings of the Scientific Advisory Panel  
6 were incorporated into proposed revisions to PM 4.6. The proposed performance  
7 measures also were reviewed by subject matter experts and the Delta Independent  
8 Science Board to ensure the best available science was used for creating the metrics  
9 and targets.

10 See Topical Response 1: Development and Purpose of the Proposed Ecosystem  
11 Amendment for additional information about the extensive process undertaken to  
12 develop the proposed Ecosystem Amendment.

13 **OR2-7:**

14 See response OR2-6.

15 **OR2-8:**

16 This comment references Delta Plan Policy ER P5, which applies to covered actions  
17 with a “reasonable probability of introducing or improving habitat conditions for  
18 nonnative invasive species (Cal. Code Regs., tit. 23, section 5009). ER P5 does not  
19 establish an obligation wherein a covered action would be required to mitigate or  
20 eliminate existing nonnative invasive species. Delta Plan Policy ER P5 is not being  
21 revised as part of the proposed Ecosystem Amendment, however, and therefore is not  
22 analyzed in the Draft PEIR.

23 **OR2-9:**

24 See responses OR2-10 through OR2-15. The commenter’s offer to answer questions  
25 on the comments in this letter and work further with the Council on Adaptive Strategy  
26 development will be forwarded to the Council.

27 **OR2-10:**

28 As described in Draft PEIR Section 5.1, Approach to the Environmental Analysis, on  
29 page 5.1-1, the Draft PEIR assumes that the Delta Plan and the Proposed Project  
30 would be implemented and achieve their desired outcomes, regardless of whether the  
31 outcomes are expressed as policies, recommendations, or performance measures.  
32 Accordingly, the Draft PEIR evaluates the potential impacts of types of projects that the  
33 Delta Plan, as a whole and as amended by the Proposed Project, would encourage and  
34 promote in the Primary and Extended Planning Areas.

35 The Environmental Setting of Section 5.11, *Hydrology and Water Quality*, includes  
36 information on harmful algal blooms within the Primary Planning Area (see Draft PEIR  
37 pages 5.11-15).

38 Draft PEIR Impact 5.11-1 discusses potential water quality impacts of constructed  
39 facilities and operations of the proposed Ecosystem Amendment, including harmful algal  
40 blooms (see Draft PEIR page 5.11-131). Once specific projects are proposed by entities  
41 in response to the proposed Ecosystem Amendment, their impacts, including those

associated with harmful algal blooms would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review. See response OR2-14 regarding the cumulative impact analysis in the Draft PEIR.

The comment also references the proposed Delta Conveyance project which is proposed by another State agency and is not part of the project being evaluated in this Draft PEIR. As CEQA lead agency, DWR issued a NOP for the Delta Conveyance project on January 15, 2020, and held scoping meetings throughout the State. Draft PEIR Chapter 7, *Cumulative Impacts*, includes consideration of the Delta Conveyance Project (see Table 7-2 on page 7-5) in the cumulative impact analysis for the Proposed Project.

#### **OR2-11:**

As stated in the comment, the Draft PEIR recognizes the ongoing presence of legacy mercury in the Primary Planning Area (pages 5.11-11 to 5.11-16; and Extended Planning Area (pages 5.11-36 to 5.11-40; and 5.11-49 to 5.11-55). Impact 5.11-1, addresses that implementation of projects in response to the proposed Ecosystem Amendment could result in the release of pollutants into surface and/or groundwater that could violate any water quality standards, or waste discharge requirements, or substantially degrade water quality or conflict with implementation of a water quality control plan. The discussion of Impact 5.11-1 states that projects constructed in response to the proposed Ecosystem Amendment could result in changes to sediment dynamics and the bioavailability of mercury as methylmercury (see pages 5.11-130 and 5.11-131). Revised Mitigation Measure 3-1(a) through (c) and (e) would minimize water quality violations and degradation of water quality.

#### **OR2-12:**

This comment provides information on carbon sequestration and carbon capture and storage. It also notes that the Draft PEIR does not address impacts associated with carbon capture storage technology. As noted in the comment, the Proposed Project does not include identification of specific carbon capture storage technology, or its use and/or monitoring. Therefore, analysis of such technology is outside of the scope of this Draft PEIR.

In addition, as discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. Once specific projects are proposed by other entities, including those that might propose the use of carbon capture storage, project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**OR2-13:**

The potential for projects implemented in response to the proposed Ecosystem Amendment to affect local hydrology, groundwater recharge and water quality is addressed in Section 5.11, *Hydrology and Water Quality*. The Draft PEIR addresses impacts associated with the need for new or expanded water supplies (Impact 5.18-1) and sufficiency of water supplies to serve the Proposed Project (Impact 5.18-2) in Section 5.18, *Utilities and Public Services*. Specific to water supply, as described under Impact 5.18-2 on page 5.18-29 of the Draft PEIR, impacts were determined to be less than significant. Certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes (including those of small community water systems). However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta. Once specific implementation projects consistent with the Proposed Project are developed, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

The Draft PEIR also includes information on climate change that supports the environmental impact analysis relevant topics within Chapter 5. See Chapter 6, *Climate Change and Resiliency*.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**OR2-14:**

Table 7-2 (on pages 7-3 through 7-8) in Draft PEIR Chapter 7, *Cumulative Impacts*, includes a representative sample of the reasonably foreseeable and probable programs, projects, and policies that could have impacts that cumulate with the impacts of the Proposed Project, and the other programs, projects, and policies included in the cumulative impact assessment. These projects include other habitat restoration projects. In addition to the representative sample found in Table 7-2, there are various other types of infrastructure projects within the Planning Area (e.g., water infrastructure projects) that could contribute to cumulative impacts.

As described in response OR2-10, the Delta Conveyance project is proposed by another State agency and is not part of the project being evaluated in this Draft PEIR. Draft PEIR Chapter 7, *Cumulative Impacts*, includes consideration of the Delta Conveyance Project (see Table 7-2 on page 7-5) in the cumulative impact analysis for the Proposed Project.

**OR2-15:**

This comment is noted and will be forwarded to the Council for their consideration.

November 30, 2021

*Delivered via email:* [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

Ms. Harriet Ross  
Assistant Planning Director  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

Subject: Delta Plan Ecosystem Amendment PEIR

Dear Ms. Ross:

The State Water Contractors (“SWC”) appreciate this opportunity to comment on the Draft Programmatic Environmental Impact Report for the Delta Plan Ecosystem Amendment (“Draft PEIR”). SWC appreciates the Council’s role in bringing together a strategic vision for ecosystem restoration that advances the coequal goals for the Delta through this amendment.

The SWC is an organization representing 27 of the 29 public water entities that hold contracts with the California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water.<sup>1</sup> Collectively, the SWC members provide a portion of the water supply delivered to approximately 27 million Californians, roughly two-thirds of the State’s population, and over 750,000 acres of irrigated agriculture. Water supply delivered to the Bay Area, San Joaquin Valley, central coast, and southern California from the SWP is diverted from the Sacramento-San Joaquin River Delta. Through charges for participation in the SWP, SWC’s members have funded and continue to fund extensive ecosystem restoration required as mitigation in SWP permits. SWC and some of its largest member agencies have a long history of supporting and funding improved monitoring and scientific research to inform both water management and ecosystem restoration in the Delta. Thus, the SWC and its members have a substantial interest and expertise that can inform any Delta activities, regulations, and policies, including those that affect Delta ecosystem restoration.

<sup>1</sup> The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley East Kern Water Agency; Central Coast Water Authority; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo County Flood Control & Water Conservation District; Santa Clara Valley Water District; Santa Clarita Valley Water Agency; Solano County Water Agency; and Tulare Lake Basin Water Storage District.



#### DIRECTORS

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Secretary-Treasurer  
Mojave Water Agency

**Stephen Arakawa**  
Metropolitan Water District  
of Southern California

**Robert Cheng**  
Coachella Valley Water  
District

**Laura Hidas**  
Alameda County Water  
District

**Thomas Pate**  
Solano County Water  
Agency

**Matthew Stone**  
Santa Clarita Valley Water  
Agency

**Jacob Westra**  
Tulare Lake Basin Water  
Storage District

**General Manager**  
Jennifer Pierre

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Ms. Harriet Ross  
Delta Stewardship Council  
November 30, 2021  
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We acknowledge the challenges of bringing together diverse stakeholders in a dynamic ecosystem with complex problems created over decades and factoring in changing demands. We agree that the state needs a long-term, feasible plan to achieve landscape-scale habitat restoration in the Delta and that flows, or ecosystem restoration alone will not work. A combination of ecosystem restoration and functional flows is necessary to activate floodplain, generate turbidity and/or food web production, send signals to migratory species, etc. To that end, the SWC has submitted comments on earlier drafts of the proposed amendment and the Notice of Preparation for the Draft PEIR, and those comments are included in here by reference.

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The enclosed table summarizes specific comments on the Draft PEIR with recommended ways to resolve the comments. We appreciate the amount of effort that the Council and its staff have put into this amendment. We are interested in continuing to work with the Council and staff as the process moves forward. If you have any questions about our comments or would like to discuss ways, we can help support the process, please call me at (916) 447-7357 ext. 203.

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Sincerely,



Jennifer Pierre  
General Manager

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ES-4  3.1-2	Executive Summary Project Objectives and in Introduction  Project Objectives	The first objective is "Further the statewide policy to reduce reliance on the Delta in meeting the state's future water supply needs through regional self-reliance (Wat. Code section 85021)[.]" Because the project is an update to Chapter 4, Ecosystem Restoration and associated appendices, it is not clear why one of the project's objectives is to reduce reliance on the Delta to meet California's future water supply needs through regional self-reliance. Reduced reliance is addressed in Chapter 3, and the Council is not proposing any changes to that Chapter or the associated appendices.	Eliminate the first objective because it is irrelevant to the updates to Chapter 4.
ES-15	Executive Summary and globally throughout.	The impact analysis in this Draft PEIR assesses the potential effects of different types of projects and activities that could be undertaken in response to the proposed Ecosystem Amendment.	It doesn't seem like "undertaken in response to" is the correct wording. Projects are not being undertaken because of the proposed Ecosystem Amendment. Suggest editing language to "The impact analysis in this Draft PEIR assesses the potential effects of different types of projects and activities that could be undertaken in consideration of the proposed Ecosystem Amendment."
ES-16	Executive Summary and globally throughout.	At line 10, the Council concludes that because project-specific details are unknown and mitigation would be implemented by other agencies, not the Council, "significant impacts would remain significant and unavoidable." If the Council does not know whether the impacts would, in fact, remain significant and unavoidable, it cannot know that they "would."	Recommend rephrasing to state instead: "the Council has reached a significant and unavoidable determination in an abundance of caution."
ES-16	Lines 17-20, but also throughout the PEIR where significance with implementation of mitigation is discussed.	The PEIR states that "CEQA requires" a lead agency to find impacts to be significant and unavoidable if the mitigation is within the responsibility of another agency. That is not the law. As long as a mitigation measure's effectiveness is supported by substantial evidence and is reasonably certain, it is not an abuse of discretion to conclude that the impact is mitigated to less-than-significant. ( <i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority</i> (2013) 57 Cal.4th 439, 466 ["While the Expo Authority and MTA cannot guarantee local governments will cooperate to implement permit parking programs or other parking restrictions, the record supports the conclusion these municipalities "can and should" (§ 21081, subd. (a)(2)) do so. Neighbors's speculation that a municipality might not agree to a permit parking program—which MTA would pay for and which would benefit the municipality's own residents—is not sufficient to show the agency violated CEQA by adopting this mitigation measure. (See <i>City of Marina v. Board of Trustees of California State University</i> (2006) 39 Cal.4th 341, 364–365 [46 Cal. Rptr. 3d 355, 138 P.3d 692] [the finding that mitigation through sharing the cost of necessary improvements with the responsible agency is infeasible was not justified by speculation that the agency might not agree to undertake the improvements]"].)	Reconsider each significance determination in light of the holding in <i>Neighbors for Smart Rail</i> for covered actions. Non-covered actions do not require a certification of consistency, so the conclusion of SU is supported for those; but agencies that must certify consistency will have to show they have adopted the Council's MMs, MMs of equal or better efficacy, or that the MMs are infeasible. Thus, it is unrealistic to assume throughout that because other lead agencies will have to implement mitigation that it is unknown if they will do so.

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3-6 and 3-7	Line 19, but also through the PEIR	"Create more natural, functional flows." vs "Create more natural functional flows."	The comma is inconsistently used. As noted in previous SWC letters on the Chapter 4 Amendment we agree in concept on the focus of Core Strategy 1 but have concerns with describing them as "more natural." We recommend using "functional flows," which activate or mimic natural processes rather than "natural" flows.
5.2-2	Aesthetics, Primary Planning Area, Major Visual Features, Waterways	Missing in the description of the discussion of the scenic backdrop of the extensive waterways of the Delta is a mention of the abandoned vessels scattered throughout the Delta channels/sloughs, and rivers.	Suggest adding this description when discussing the scenic backdrop and visual features.
5.2-9	Aesthetics, Primary Planning Area, Major Visual Features, Built Environment, Outdoor Recreation Area	Missing in the description of the discussion of the outdoor recreation areas is the private docks, lean-tos, and informal fishing areas scattered throughout the Delta.	Suggest including the inter channel/slough islands of varying sizes, some inhabited with docks (e.g. water ski clubs, private residences or other recreational clubs, informal lean-tos for hangouts for occasional beach access during low tide, etc.). These are scattered throughout the Delta with very few islands not being developed or used in some way. Additionally, there is no discussion about how informal fishing areas have impacted the visual character of certain reaches of a slough, channel, or riverbank.
5.3-18  7-12	Agriculture and Forestry Resources Effects of Constructed Facilities and Operations  Cumulative Impacts, Agriculture and Forestry Resources	The goal for restoration of natural communities in the Primary Planning Area is 82,340 acres by 2050. If it is possible that all or most restoration would occur in Farmland, land subject to a Williamson Act contracts, or land zoned for agricultural use, there will be substantial third-party impacts to the surrounding communities.	The prevalence and distribution of agricultural infrastructure directly and indirectly affects labor requirements, economics, and environmental justice. If up to 82,340 acres of land zoned for agricultural use, these indirect impacts should be briefly addressed in the Agriculture and Forestry Resources chapter and referenced when discussing socioeconomics and Cumulative Impacts in Chapter 7 where it should be analyzed and discussed in light of environmental justice.
5.3-21	Agriculture and Forestry Resources Mitigation Measure(s) 7-1(a) and 7-1(c)	Important to note the minimum target ratio of 1:1 to preserve farmland in perpetuity is for Prime Farmland and Farmland of Statewide Importance. The concern is other lands such as Grazing Land should also be included to achieve "regenerative farming" that requires a rotation of grazing to achieve true regeneration of the soil.	Table 5.3-1 (Delta Primary Planning Area) includes 58,660 acres of Grazing Land. This amount or a portion of this amount should be included in the 1:1 ratio to ALSO preserve the important grazing land as well. Update 7-1(a) to include Grazing Land.
5.3-21	Agriculture and Forestry Resources Mitigation Measure(s) 7-1(a) and 7-1(c)	Important to note the minimum target ratio of 1:1 to preserve farmland in perpetuity is for Prime Farmland and Farmland of Statewide Importance. The concern is other lands such as Farmland of Local Importance should also be included to allow building of the soil through Healthy Soil Practices that requires addition of compost, cover crops, less tillage or no-till, and crop rotation to improve the soil health to a Prime Farmland status category.	Table 5.3-1 (Delta Primary Planning Area) includes 51,789 acres of Farmland of Local Importance. This amount or a portion of this amount should be included in the 1:1 ratio to ALSO preserve the important Farmland of Local Importance land as well. Update 7-1(a) to include Farmland of Local Importance.
5.5-2	Factors Affecting Abundance	There are a lot of statements attributing a lot of causality that need citations added	Provide citations for many of the statements, for example "Dredging and other physical changes have altered flow patterns and salinity." There are many more like this in this whole section.

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5.5-3	Factors Affecting Abundance (cont)	"....critical habitat for Delta Smelt in the low-salinity zone ..."	The use of the term "critical habitat" may be misconstrued as a regulatory designation. Critical habitat is not limited to the Low salinity zone for Delta smelt. Suggestion using another term.
5.5-3	Factors Affecting Abundance (cont)	"This constriction of critical habitat..." The two statements beginning with the quoted section are disputed given the recent smaller distribution can be attributed to high temperatures (FLOAT MAST) and confounded by lower densities. Also, the constriction does not necessarily change the likelihood of exposure to stressors as stressors are ubiquitous regardless of constriction (Teh et al 2020). Teh et al (2020) evaluated histopathological lesions in Delta smelt and found them regardless of year type and location. In addition, the lesions were less prevalent in the drier years of 2015 and 2016 which had more constricted Low salinity zone.	Recommend either acknowledging the complexity of the issue or perhaps highlighting that the statements are hypotheses.
5.5-4	Harmful Invasive Species	Line 42: "Predation on Delta smelt ..."	Add the citation by Nobriga and Smith 2020 on striped bass and Delta smelt predation.  Nobriga, M. L., & Smith, W. E. (2020). Did a Shifting Ecological Baseline Mask the Predatory Effect of Striped Bass on Delta Smelt?. San Francisco Estuary and Watershed Science, 18(1).
5.5-4	Harmful Invasive Species	The section uses the terms non-native and invasive species interchangeably (including the section title). "Invasive species" are generally understood to be non-native species that are harmful and/or spreading (Peter Moyle provides some definitions here: <a href="https://californiawaterblog.com/2021/08/08/living-with-non-native-fishes-in-california-requires-using-the-right-words/">https://californiawaterblog.com/2021/08/08/living-with-non-native-fishes-in-california-requires-using-the-right-words/</a> ). Many of the species in this section became established because they are filling a niche created by changes to the Delta (e.g. slower, warmer waters favor largemouth bass) rather than outcompeting native species outright.	Reserve "invasive species" term for species where there is documented harm and/or spread. Specifically, line 18 should say "some of the most <i>established</i> ..." rather than <i>invasive</i> . Section title should be changed to "Non-native species" or "Effects of Non-native species".
5.5-5	Altered Flow Regimes	There are a lot of statements attributing causality that need citations added	Provide citations for many of the statements
5.5-5	Altered Flow Regimes	"It draws, others, such as Delta smelt..." suggests a definitive mechanism for how Delta smelt go into the South Delta. Although the presence of Delta smelt in the south Delta is not in dispute how and why they get there has been debated.	Suggest adding the "may" between "it draws" in this statement
5.5-6	Altered Sediment Supply	Line 27: States that turbidity reduces Largemouth bass predation.	Include Ferrari et al 2014 as supporting this statement.  Ferrari, M. C., Ranåker, L., Weinersmith, K. L., Young, M. J., Sih, A., & Conrad, J. L. (2014). Effects of turbidity and an invasive waterweed on predation by introduced largemouth bass. Environmental Biology of Fishes, 97(1), 79-90.

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5.5-6	Entrainment	Line 33: States that the water projects are contributing to the decline of fishes in the upper San Francisco estuary. The cited paper does not determine this.	Use Kimmerer 2008 and 2011 as well as Rose et al 2013 as supporting this in regard to Delta smelt and Chinook salmon. Also, the POD paper (Sommer et al 2007) "considered" entrainment a contributing factor.
5.5-6	Entrainment	Line 40: Need to update the citations	Add Grimaldo et al 2021.  Grimaldo, L. F., Smith, W. E., & Nobriga, M. L. (2021). Re-Examining Factors That Affect Delta Smelt ( <i>Hypomesus transpacificus</i> ) Entrainment at the State Water Project and Central Valley Project in the Sacramento–San Joaquin Delta. <i>San Francisco Estuary and Watershed Science</i> , 19(1).
5.5-6	Altered Sediment Supply	Section links altered sediment supply to reduced turbidity (increased clarity), including "washout" from inflows in very wet years and filtering from Brazilian waterweed. Additional potential mechanism for increased clarity is the multidecade reduction in winds documented by Bever et al. 2018	Include declining wind speed mechanism and cite:  Bever, Aaron J., Michael L. MacWilliams, and David K. Fullerton. "Influence of an observed decadal decline in wind speed on turbidity in the San Francisco Estuary." <i>Estuaries and Coasts</i> 41.7 (2018): 1943-1967.
5.5-6:7	Entrainment	States water diversions are source of entrainment and that some have been screened but thousands have not without mentioning those that have been screened were prioritized because of their potential impact.	It should be noted that the diversions that have been screened are a non-random sample of all screens—priority has been given to screening diversions with the greatest (assumed) effect size.
5.5-7	Contaminants	The list of types of contaminants is not complete and some are redundant. For example, herbicides are pesticides.	Suggest using Fong et al (2016) provide the categories of contaminants for this listing.  Fong, S., Louie, S., Werner, I., Davis, J., & Connon, R. E. (2016). Contaminant effects on California Bay–Delta species and human health. <i>San Francisco Estuary and Watershed Science</i> , 14(4).
5.5-7	Contaminants	Line 22-27. Some of these statements are not properly worded. Contaminants are not "generally species-specific". If they were then we could not use standard toxicity testing species as established by the EPA.	Suggest providing citations supporting these statements and deleting the first sentence.
5.5-7	Contaminants	Line 29. The list of common use herbicides is not correct. Either penoxsulam or imazamox is not allowed to be used. There was a conflict with how the pesticide was allowed to be used therefore the Division of Boating and Waterways had to abandon further development of its use.	Suggest checking with the Division of Boating and Waterways to confirm which of the two could not be used.

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5.5-8	Other water quality issues	Discussion of turbidity includes potential foraging and physiological effects on delta fish but does not include effects on detection in fish surveys.	Discuss consequences of turbidity on detection efficiency in fish monitoring surveys, cite  Mahardja, B., et al. "Understanding imperfect detection in a San Francisco Estuary long-term larval and juvenile fish monitoring programme." <i>Fisheries Management and Ecology</i> 24.6 (2017): 488-503.  Peterson, James T., and Miguel F. Barajas. "An Evaluation of Three Fish Surveys in the San Francisco Estuary, 1995–2015." <i>San Francisco Estuary and Watershed Science</i> 16.4 (2018). Peterson and Barajas
5.5-8	Other water quality issues	Temperature effects on salmon survival and predator avoidance citations are old/general	Include more recent, Delta specific studies, e.g. Lehman et al 2017 and Nobriga et al 2021
5.5-11	Special Status Fish Species	Line 39: The inclusion of Longfin smelt in the list of estuarine species ignores the evidence that the species is routinely detected in the ocean and even in the ocean outside of the San Francisco Bay as well as evidence of ocean salinity occupancy in their otoliths.	Remove the species from being included with Splittail and Delta smelt or just add the additional range of the ocean in a following sentence as is supported by Garwood 2017 and Lewis et al 2019. It is acknowledged that the species is semelparous in its own section so make it consistent.  Garwood, R. S. (2017). Historic and contemporary distribution of Longfin Smelt ( <i>Spirinchus thaleichthys</i> ) along the California coast. <i>California Fish and Game</i> , 103, 96-117.  Lewis, L., Barros, A., Willmes, M., Denney, C., Parker, C., Bisson, M., Hobbs, J., Finger, A., Auringer, G. and Benjamin, A., Interdisciplinary Studies on Longfin Smelt in the San Francisco Estuary.
5.5-12	Delta smelt	Line 41 lists the various stressors on Delta smelt but needs to update the citations.	Include Hamilton and Murphy 2018 as they determined predation may be a significant stressor as well as Smith et al 2021.  Hamilton, S. A., & Murphy, D. D. (2018). Analysis of limiting factors across the life cycle of delta smelt ( <i>Hypomesus transpacificus</i> ). <i>Environmental management</i> , 62(2), 365-382.  Smith, W. E., Polansky, L., & Nobriga, M. L. (2021). Disentangling risks to an endangered fish: using a state-space life cycle model to separate natural mortality from anthropogenic losses. <i>Canadian Journal of Fisheries and Aquatic Sciences</i> , 78(8), 1008-1029.

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5.5-12-16	Special-Status Fish Species	Most species accounts begin with their State and Federal listing status, but for some species (e.g. longfin smelt, Pacific lamprey, Riffle sculpin, Sacramento Hitch) the account begins with discussion of their life-history or size (why is it important to mention the size of longfin smelt in the first sentence of their species' status account when the size isn't mentioned at all in the other species accounts?).	For consistency begin all species status accounts with the species status.
5.5-14	Special-Status Fish Species	No mention of rainbow trout in steelhead species account. They are different phenotypes of the same species and steelhead mothers can have rainbow trout offspring and vice versa. Steelhead have special status, rainbow trout do not; however, it is an oversight not to point out that the anadromous steelhead form has a resident form that buffers the population from impacts experienced by the anadromous form.	Include description of rainbow trout in species status account of steelhead
5.5-19	Tidal Open water	Line 5 suggests there are two categories of aquatic vegetation. There are actually three. The emergent vegetation is also a category of aquatic vegetation which consists of Tules and Arundo among others	Include the emergent vegetation designation. It is also included in the citation, Ta et al (2017).
5.5-23	Global comment about 5.5	Throughout the chapter "trout" are frequently mentioned. This is undoubtedly in reference to rainbow trout, but it often follows a mention of Steelhead. Steelhead and Rainbow Trout are the same species. They have different statuses under state and federal ESA, but it is well known that they are the same species and both forms can have offspring of the other form.	The biological and regulatory relationship between steelhead and rainbow trout should be clearly stated. See above.
5.5-25	Colusa to the Delta	"Non-native Striped Bass and American Shad also occur downstream of RBDD." Section is about reach downstream of Colusa, why does this statement reference RBDD?	Should this say downstream of Colusa?
5.5-42	Impacts and Mitigation Measures	There are a lot of assumptions and very little specifics on the potential for impacts and the potential for mitigation measures to reduce or offset those impacts	Not sure how you resolve this but what are the contingencies if the impacts end up greater than expected or the mitigation is less effective?
5.6-96	Terrestrial Resources	18-2(d) Where impacts to existing facilities are unavoidable, affected facilities shall be restored to their original condition once project construction activities are complete. If this is not feasible, new permanent or replacement facilities shall be constructed that are similar in type and capacity.  For example, it may not be feasible to construct new/permanent replacement recreational facilities. (Line 33)	Where impacts to existing facilities are significant and unavoidable...  The requirement for new permanent or replacement facilities is over-mitigation. The requirement under CEQA is for mitigation to reduce impacts to less-than-significant.  Provide a different example to support the conclusion that "this impact could remain significant and unavoidable."

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5.7-27	Cultural Resources Chapter - Line 40-42	Statement is, "A prehistoric archaeological resource that qualifies as a historical resource under CEQA generally qualifies for listing under Criterion 4 of the CRHR (CEQA Guidelines section 15064.5(a)(3)(D)) (NRHP Criterion D). An archaeological resource may qualify for listing under Criterion 4 when it can be demonstrated that the resource has the potential to significantly contribute to questions of scientific or historical importance." A prehistoric archaeological resource can qualify for any of the CRHR or NRHP criterion, however it typically qualifies most often under Criterion 4/D. It is inaccurate to state that an archaeological resource or a prehistoric archaeological resource can only qualify for the CRHR/NRHP under Criterion 4/D (Data potential).	Recommend clarifying that prehistoric archaeological resources can qualify for any CRHR/NRHP Criterion, not just 4/D.
5.7-33/34	Cultural Resources Chapter - Thresholds of Significance	This section erroneously states that Appendix G of the CEQA guidelines was updated and per the update, that an impact related to cultural resources is considered significant if the Proposed Project would disturb any human remains, including those interred outside of formal cemeteries. The Appendix G updates do not state this. The Appendix G question only continues to ask the Lead Agency whether a project would disturb any human remains, including those interred outside of formal cemeteries, and asks if the impact is considered potentially significant, LTS w/mitigation, LTS, or No Impact. The Guidelines do not imply that any impact to human remains is significant.	Recommend rephrasing this statement to reflect actual language/Appendix G question regarding the disturbance of human remains.
5.7-36	Cultural Resources Mitigation Measure 10-3(b)	This measure, in part, describes complying with federal laws and regulations overseen by a federal agency.	Suggest removing reference to federal compliance as compliance with existing laws is not mitigation, and this is unenforceable by a CEQA lead agency as it would be overseen and implemented at the discretion of a federal entity.
5.7-37	Cultural Resources Mitigation Measure 10-3(c)	Unclear what is intended by this mitigation measure and its feasibility. Measure states, "Identify measures to avoid significant historic resources".	Clarify whether the DSC is recommending additional, but unspecified mitigation measures to avoid all built environment resources and archaeological resources on or eligible for the CRHR and NRHP.
5.7-38	Cultural Resources Chapter - Line 26	Document states that, "Archaeological resources include any material remains of human life or activities that are at least 100 years of age, and that are of archaeological interest." However, archaeological sites can be less than 100 years in age.	Suggest adding a citation for this statement or clarifying whether the author was referring to only prehistoric archaeological sites, not all archaeological sites.

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5.7-40	Cultural Resources Mitigation Measure 10-1(a)	This mitigation measure states that intensive archaeological surveys, including subsurface investigations, must occur to identify locations, extent, and integrity of undocumented archaeological, tribal cultural, and landscape resources in a project's area of potential disturbance. Depending on the depth of the archaeological deposit, age of soils, or geomorphology, subsurface investigations may not be needed for every project. Subsurface investigations, by their nature, destroy archaeological sites, thus this measure conflicts with MM 10-3(c) to avoid significant historical resources.	Suggest more programmatic language or steps for this mitigation measure. An archaeological survey should be conducted, and if warranted, a subsurface survey.
5.7-40	Cultural Resources Mitigation Measure 10-1(a)	The term Traditional Cultural Property is a federal term. Is TCP identification only intended when there is federal oversight on a proposed project? Unclear based on how mitigation measure is written.	Clarify how cultural landscapes and TCPs are intended to be found during a field reconnaissance survey or subsurface investigation on a project with no federal nexus.
5.7-41	Cultural Resources Mitigation Measure 10-1(d)	This measure states, "If federal agencies are participants in the project and Section 106 of the National Historic Preservation Act applies, conduct formal consultation with the State Historic Preservation Officer and the Native American community. Potential adverse effects on cultural resources recommended as eligible for listing in the NRHP will be resolved through the development of a memorandum of agreement and/or a program-level agreement."	Suggest removing reference to federal compliance as this is unenforceable by a CEQA lead agency and overseen and implemented at the discretion of a federal entity. Compliance with existing laws and regulations should not be considered mitigation under CEQA.
5.7-41	Cultural Resources Mitigation Measure 10-2 a through 10-2 f	These measures describe projects on federal land or compliance with existing laws and regulations as mitigation. Federal regulations and procedures should be left to the federal lead agency to decide how and when to implement through the federal environmental review process. Compliance with existing laws and regulations should not be considered mitigation under CEQA.	Suggest removing reference to federal compliance as this is unenforceable by a CEQA lead agency and overseen and implemented at the discretion of a federal entity. Compliance with existing laws and regulations should not be considered mitigation under CEQA.
5.11-3	Overview of California Water Resources	Lines 22-23 state that "California, in an average water year, receives about 200 million acre-feet of water from precipitation and imports from Colorado, Oregon and Mexico." I have never heard California water sources described this way. "Imports" implies actual constructed water facilities importing water from the states of Colorado and Oregon and from Mexico. This is not accurate.	Statement should be corrected to say "imports from the Colorado River".
5.11-6	5.11.2 Environmental Setting, Overview of California Water Resources	Lines 8-10 state that groundwater supplies about 35 percent of the state's water needs, and 40 percent or more in droughts. Lines 18-21 state that groundwater provides close to 40 percent of water for uses and that that percentage increases in dry years.	Use consistent numbers or reconcile the differences between the two statements.
5.11-18	5.11.2 Environmental Setting, Surface Water Use	The primary consumptive water users in the Delta are agricultural and urban. These users divert water from the Delta and its tributaries at over 1,800 diversion points and may not have fish screens or meters. These diversions can total more than 5,000 cubic feet per second (cfs) in July and August (DWR 2009b).	The 1,800 diversion points referenced only account for diversions in the Delta, this number does not include Suisun Marsh diversions or other areas that would be included in the Primary Planning Area. Find a total number for the Primary Planning Area or include text describing the areas not accounted for in this number.

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5.11-62	Water Recycling and Water Conservation	The paragraph provides an example of water recycling and conservation in the San Joaquin River basin.	Suggest adding a new water recycling project implemented by Modesto and Turlock – the North Valley Regional Recycled Water Program. Through this program Modesto and Turlock discharge treated wastewater effluent through a joint outfall to the DMC for transport downstream to agricultural water users.
5.11-75	San Francisco Bay Area, Groundwater Hydrology and Quality	The section states, “Importation of surface water via the Hetch Hetchy and South Bay aqueducts and the development of an artificial recharge program have favored the rise of groundwater levels since 1965 (DWR 2004i:2)” This misses an important point that conditions are now sustainable.	Suggest adding the following to the end of this sentence, “halting permanent subsidence around 1970 and resulting in many decades of sustainable conditions (SCVWD 2016)”
5.11-77	San Francisco Bay Area, Groundwater Hydrology and Quality	The section states, “In the southern Bay Area, groundwater and surface water are connected through instream and offstream artificial recharge projects, in which surface water is delivered to water bodies that permit the infiltration of water to recharge overdrafted aquifers.” Groundwater in the southern Bay Area is not currently overdrafted, nor are recharge projects limited to overdrafted aquifers.	Suggest deleting “overdrafted” from the sentence.
5.11-77	San Francisco Bay Area, Groundwater Hydrology and Quality	The section states, “Surface water is mostly losing to groundwater, as the groundwater basins have been pumped extensively for various uses.”	Suggest revising to, “Surface water is mostly losing to groundwater because of current hydrologic conditions and groundwater pumping for various uses
5.11-78	San Francisco Bay Area, Imported Water	The section states, “The Bay Area receives imported water from the SWP through the North Bay Aqueduct and the South Bay Aqueduct, and receives CVP water via the San Felipe Canal previously stored in the San Luis Reservoir.” This sentence is incorrect.	The Bay Area receives CVP water from San Luis Reservoir via the Pacheco Tunnel and Santa Clara Conduit.
5.11-79	San Francisco Bay Area, Imported Water	The section states, “SCVWD water supplies include SWP water via the South Bay Aqueduct, CVP water via the San Felipe Division of the CVP, and water from the SFPUC’s Hetch Hetchy Aqueduct.” This sentence is incorrect.	SCVWD water supplies do not include water from SFPUC’s Hetch-Hetchy Aqueduct. SFPUC supplies water directly to several customers within Santa Clara County.
5.11-79	San Francisco Bay Area, Imported Water	The section states, “Some water for agricultural uses within Monterey, San Benito, San Mateo, and Santa Cruz counties also receive imported CVP water from the San Felipe Division of the CVP.” The San Felipe Division only supplies water to San Benito and Santa Clara Counties. The facilities to delivery water to Santa Cruz County were never built.	Revise to, “Some agricultural uses within San Benito and Santa Clara counties also receive imported CVP water from the San Felipe Division of the CVP

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Page	Section Number	Comment, Question, Concern, or Issue	Recommended Resolution
5.11-88	Southern California, Surface Water Hydrology	However, urban runoff, wastewater discharges, agricultural tailwater, and groundwater seepage are sources of surface flows during the dry season. During the past 30 years, dry-weather flows have increased due to increased runoff from urban development (DWR 2009a:SC-22).	This statement and reference are out of date. Dry weather flow in Southern California is on the decline as more water is recycled and dry weather diversions capture more water for recharge to comply with MS4. For example, Santa Ana River baseflow has declined significantly over the past 10+ years. Suggest updating this information and reference.
5.11-88	Southern California, Surface Water Quality	Salinity also affects recycled water use because it must either be removed for some uses, or be reduced to prevent habitat, plant, and groundwater degradation.	Salinity also impacts groundwater recharge capability directly. Basins Management Plans/Salt and Nutrient Management Plans limit the TDS of water that can be recharged, this applies to recycled water recharge as well as direct recharge from surface supplies i.e., CRA supplies cannot be used to recharge local groundwater basins due to high salinity, recharge must be made from local surface runoff, treated recycled water, and/or SWP supplies.
5.11-90	Southern California, Groundwater Hydrology and Quality	Brackish groundwater exists primarily in the San Diego region, areas of the Inland Empire, and coastal areas of Los Angeles and Orange counties. In addition, high TDS levels are a problem in the Coachella Valley.	It should be noted that in coastal areas of Los Angeles and Orange counties seawater intrusion is actively managed through injection of recycled water or a blend of recycled and imported water supplies to create a seawater barrier.
5.11-92	Southern California, Water Use and Infrastructure	The CRA system consists of 5 pumping plants, 16 hydroelectric plants, 9 reservoirs (over 1 million acre-feet of total capacity), and 5 water treatment plants to move water to Metropolitan member agencies (Metropolitan 2017:1).	This sentence is incorrect, the CRA system consists of 5 pumping plants among other things, however the hydroelectric plants, reservoirs, etc. are a part of Metropolitan's overall distribution system, not the CRA system.
5.11-92	Southern California, Water Use and Infrastructure	The All-American Canal supplies water to the Coachella Valley Water District and Imperial Irrigation District.	With discussion of the All-American Canal a like discussion of the Coachella Canal should also be included. In addition, the All-American Canal and Coachella Canal also supply water to the San Diego County Water Authority, a Metropolitan member agency, through a transfer and exchange agreement with Metropolitan.
5.11-97	Southern California, Water Transfers and Exchanges.	Table 5.11-14 Southern California Water Supply Transfers and Exchange Agreements	Table 5.11-14 placement after the beginning of new section 5.11.3 Regulatory Setting is not ideal. Also, UWP or other planning documents should be used to review this list, this information seems out of date.
5.11-105	Regulatory Setting, Coordinated Operations Agreement	Coordinated Operations Agreement discussion on pages 5.11-105 to 5.11-107 needs to be updated.	The Coordinated Operations Agreement (COA) was renegotiated and an addendum to the agreement was entered into in December 2018. The terms between the United States and the State of California were changed. The COA discussion should be updated to include this new information.

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Page	Section Number	Comment, Question, Concern, or Issue	Recommended Resolution
5.11-114	Regulatory Setting, Urban Water Management Planning Act.	Pursuant to Wat. Code sections 10610–10657, as last amended by SB 318 in 2004, the Urban Water Management Planning Act requires all urban water suppliers with more than 3,000 service connections or water use of more than 3,000 acre-feet annually to submit an urban water management plan (UWMP) to DWR every five years and update the plan on or before December 31 in years ending in 5 and 0.	SB X7-7 (2009) and SB 606 and AB 1668 (2018) established new guidelines, standards and reporting for inclusion in UWMP's as well as Agricultural Water Management Plans (AWMP). This discussion should be linked to include reference to these additional requirements described on Page 5.11-121, as well as a discussion of the reporting requirements for agricultural water suppliers.
5.11-129 and 5.11-130	Effects of Constructed Facilities and Operations Salinity, X2, and Water Temperature	The document states that the proposed project expects to change flows, salinity, X2 and temperature. However, the analysis assumes that any changes in salinity, X2 and temperatures due to the proposed project will be mitigated by stored water in the SWP/CVP and other upstream reservoirs and concludes lack of any additional mitigation. The analysis ignores and does not disclose potential impacts on water supply and deliveries due to increased use of stored water to mitigate changes in salinity, X2 and temperature due to the proposed project.	Acknowledge the potential impact on surface water supply and deliveries because of changes due to proposed project.
5.11-134			Appropriate mitigation should be identified so that the SWP and CVP are not burdened due to the changes caused by the proposed project.
5.11-136			
5.15-5	5.15 Recreation, Hiking, Biking, Trail Use, Line 23	The planning area for the Delta Trail includes the proposed Sacramento-San Joaquin Delta National Heritage Area (DPC 2015).	The Sacramento-San Joaquin Delta National Heritage Area is no longer proposed; it was designated in 2019.
5.15-20	Recreation	Revised Mitigation Measure 4-4(c) and (d) would minimize impacts on the movement and migration patterns of terrestrial wildlife species by requiring that covered actions do the following:  4-4(c) Protect habitat for migratory waterfowl and shorebirds by expanding existing wildlife refuges and management areas, and establishing new ones, in or near wetland areas used by migratory waterfowl and shorebirds. Manage these areas by establishing suitable vegetation, hydrology, and other habitat components to optimize the use by migratory waterfowl and shorebirds.  4-4(d) Protect, restore, and enhance connectivity of habitats, including but not limited to wetland and riparian habitats that function as migration corridors for wildlife species (similar to how it has been implemented through programs such as the California Essential Habitat Connectivity Project). Acquire areas with potential to increase connectivity between existing habitats, protect these areas in perpetuity through the acquisition of conservation easements, deed restrictions, or similar tools, and restore the habitat for wildlife species in these areas. Habitat restoration might be accomplished by establishing suitable hydrology or other physical conditions for desirable vegetation, planting desirable vegetation, fencing and managing grazing, and other means.	Mitigation options should not be limited to expanding or creating new wildlife areas. Would recommend including the option to mitigate through participation in existing mitigation banks or HCPs, or creating new ones, as appropriate.

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Page	Section Number	Comment, Question, Concern, or Issue	Recommended Resolution
5.17-1	TCR Chapter - Line 26-27	Statement that tribal cultural resources also include prehistorical archaeological resources and human remains. Additionally, tribal cultural resources can encompass a larger spectrum of landscapes, sacred spaces, and objects beyond prehistoric archaeological resources.	Suggest adding the term, "may include" as not all human remains inadvertently discovered are Native American in origin.
5.17-2	TCR Chapter - Line 20	Tribal Cultural Resources is specifically a CEQA requirement. Line 20 notes that Traditional Cultural Properties are much the same as TCR's, but TCPs encompass much more than TCRs as they can be applied to any community, not just the Native American community. Additionally, this section is mixing discussion of the Section 106 process and TCP identification process which are not inherently one in the same. Also unclear why federal regulations are applied to this EIR.	Recommend removing attempts to compare traditional cultural properties with tribal cultural resources.
5.17-5	TCR Chapter – Local	Goals and policies for prehistoric archaeological resources and human remains policies described in general plans should not be considered regulatory guidance for tribal cultural resources. TCR consultation and identification is a separate process from archaeology and inadvertent discovery of human remains and determined largely between a Lead Agency and the California Native American tribe requesting to consult on a specific project.	Recommend document describe consultation process as outlined in Section 21080.3.1(b) instead of referring agencies to local plans or general plans that describe archaeology and human remains.
5.17-9	TCR Chapter – Global Comment	The TCR chapter fails to identify how the Delta Stewardship Council, acting as Lead Agency, complied with Section 21080.3.1(b) of the CEQA Statute. This chapter does not describe any efforts made to consult with California Native American Tribes prior to the release of this Programmatic EIR with regards to the proposed amendments to Chapter 4 of the Delta Plan.	Lead Agency should describe efforts made to consult with California Native American Tribes regarding the proposed amendments to the Delta Plan.
5.19-12	Impact 5.19-1, Primary Planning Area	Although the majority of the Primary Planning Area is located in the Delta where the risk of fire is considered low and the topography is relatively flat, vegetation could be present in construction and/or staging areas.	Peat fires are also of concern in the Primary Planning Area, peat fires can burn for extended periods of time and produce toxic smoke and increased carbon emissions as well as increasing the rate of subsidence.

OR3-70

OR3-71

OR3-72

OR3-73

OR3-74

Page	Section Number	Comment, Question, Concern, or Issue	Recommended Resolution
B-31-B-32	Appendix B – Revised Delta Plan Mitigation Measures	5.12 Land Use and Planning Compensate for the loss or reduction in environmental values due to a conflict with an adopted <del>protected by the subject plan or policy. For example, if the project would result in conversion of agricultural land to a non-agricultural use, potential mitigation actions could include</del> <b>by implementing the following or equally effective measures:</b> (a) Recording a deed restriction that ensures permanent conservation and mitigation on other property of equal or greater environmental mitigation value;(b) Creating a buffer or barrier between uses;(c) Redesigning the project or selecting an alternate location that avoids or mitigates the impact; and/or(d) Restoring disturbed land to conditions to provide equal or greater environmental value to the land affected by the covered action. The highlighted text mandates implementation of all four measures (a) – (d), but implementation of any one of (a), (c) or (d) would render the others duplicative. E.g., if (d) were implemented, there would be no impact left to be mitigated, so (a), (b) and (c) would be unnecessary; or if (c) were implemented to avoid the impact, then (a), (b) and (d) would be unnecessary.	Revise red text to “by implementing at least one of the following or equally effective measures:”
B-34 – B-38	5.16 Transportation	This entire MM is based on an outdated focus on LOS and other impacts to drivers. CEQA has been amended to focus on VMT, not LOS. Also, the proposed “mitigation” for a significant impact to VMT has nothing to do with reducing VMT, so is not mitigation at all for the impact identified.	Revise consistent with new CEQA requirement to analyze VMT.
B-34	Appendix B – Revised Delta Plan Mitigation Measures	5.15 Recreation measures require restoration of facilities to “original” condition, but restoration to “pre-construction” condition is more appropriate, otherwise impacts would be overmitigated.	Substitute “pre-construction” for “original” throughout.
B-34	Appendix B – Revised Delta Plan Mitigation Measures	5.15 Recreation. 18-1a requires “Where impacts to existing facilities and opportunities are unavoidable, new permanent replacement facilities and opportunities shall be constructed that are similar in type and capacity.” This measure requires over-mitigation. CEQA requires impacts to be mitigated to less-than-significant levels, where feasible, not full mitigation to a point where there is no impact whatsoever. Also, “opportunities” is vague and it is unclear how a lead agency could “construct” a recreational opportunity. Also, not all impacts to “opportunities” require mitigation, so this may lead to overmitigation. For instance, if there is an “opportunity” for bank fishing at a particular location that is impacted by a project, but no one uses that “opportunity,” then there is no impact, and no mitigation is required under CEQA.	Remove reference to “opportunities.” If it is retained, rephrase to avoid requiring construction of opportunities. “Provide” or “facilitate access to” would be more appropriate.

OR3-75

OR3-76

OR3-77

**OR3 State Water Contractors****Responses to Comments from OR3 State Water Contractors****OR3-1:**

This comment provides background information on the State Water Contractors.

**OR3-2:**

Subsection 1.3, Environmental Review and Approval Process, of Draft PEIR Chapter 1, *Introduction*, describes the environmental review and approval process for preparing the Draft PEIR, including publication and circulation of the NOP, consistent with CEQA section 15082, to obtain suggestions and information from responsible, trustee, and involved federal agencies and members of the public, including organizations and individuals, on the scope and content of the environmental analysis to be included in the proposed Ecosystem Amendment PEIR. The NOP and comments received were included in Appendix A of the Draft PEIR.

The information provided was considered in preparing the Draft PEIR. Each technical section in Chapter 5 notes in the introduction if comments were received in response to the NOP that were taken into consideration.

**OR3-3:**

See responses OR3-4 through OR3-78.

**OR3-4:**

As described on page 3-2 of the Draft PEIR, the objectives common to the Delta Plan as a whole, including the proposed Ecosystem Amendment, are derived from the Sacramento–San Joaquin Delta Reform Act of 2009 (Delta Reform Act). Accordingly, the project’s objectives are to further the achievement of the coequal goals in Wat. Code section 85054 and the eight “inherent” objectives in Wat. Code section 85020 in a manner that includes: furthering “the statewide policy to reduce reliance on the Delta in meeting the state’s future water supply needs through regional self-reliance (Wat. Code section 85021)”. Therefore, the Council will not eliminate this objective as suggested by the comment.

The project objectives specific to the proposed Ecosystem Amendment are presented on pages 3-2 to 3-3. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

**OR3-5:**

The use of the terminology “undertaken in response to” does not imply that projects are being undertaken because of the proposed Ecosystem Amendment. Instead, as described on page 4-2, the Draft PEIR analyzes potential impacts that could result from the general types of activities, potential projects, and associated construction methods that could be undertaken by other entities as a result of adoption and implementation of the proposed Ecosystem Amendment. No change will be made to the Draft PEIR.

**OR3-6:**

As described on pages 5.1-8 and 5.1-9 of the Draft PEIR, in many cases, revised mitigation measures, or equally effective feasible measures adopted as part of covered actions (and recommended for non-covered actions), would reduce impacts identified in this PEIR to a less-than-significant level. However, the specific locations, scale, and timing of possible future facilities are not known at this time, and the specific resources present within the project footprint of construction sites and new facilities in the Primary Planning and Extended Planning Areas cannot be determined. Therefore, in many cases it is not possible to conclude that significant adverse effects would be avoided or reduced to a less-than-significant level. Furthermore, implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council. Accordingly, for non-covered actions, this PEIR assumes, as CEQA requires (see CEQA Guidelines section 15091(a)(2)), that potentially significant environmental impacts would be significant and unavoidable, even if feasible mitigation measures are available, because they would be within the responsibility and jurisdiction of an agency other than the Council.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

No change will be made to the Draft PEIR.

**OR3-7:**

As described in each of the resource sections in Chapter 5 of the Draft PEIR, for covered actions, project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such facilities are proposed. The revised mitigation measures, or equally effective feasible measures, would continue to be implemented as part of the Proposed Project, and would apply to covered actions as required by Delta Plan policy G P1(b)(2). However, because the extent and location of such actions are not known, it is not possible to conclude that these mitigation measures would reduce significant impacts of covered actions to a less-than-significant level in all cases. Furthermore, implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council and can and should be adopted by that other agency. This finding is required by CEQA (see Pub. Resources Codes section 21081(a)(2) and CEQA Guidelines section 15091(a)(2)) even if the mitigation measures are capable of reducing impacts to a less-than-significant level. That is because the Council does not propose to construct or operate facilities, or undertake other physical actions as a result of adopting the proposed Ecosystem Amendment. As in *Neighbors for Smart Rail v. Exposition Metro Rail Line Construction Authority* (2013) 57Cal.4<sup>th</sup> 439, cited by commenter, the Council will make this finding at the time it adopts the mitigation measures identified in the PEIR. The adopted mitigation measures will then be adopted as regulations and, thereafter, must be adopted and implemented, if applicable and feasible, by other agencies proposing to undertake covered actions as a part of their project-level approvals. Therefore, impacts could remain significant and unavoidable. The Council does not disclaim responsibility for

adopting mitigation measures that it has the responsibility to implement as in *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 241. See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

No change will be made to the Draft PEIR.

**OR3-8:**

This comment does not address the adequacy or content of the Draft PEIR. No change will be made to the Draft PEIR.

**OR3-9:**

The suggestion to add reference to abandoned vessels scattered throughout the Delta channels and sloughs is not necessary to describe the overall visual characteristic of the Delta in support of the impact analysis. No change will be made to the Draft PEIR.

**OR3-10:**

The description of Outdoor Recreation Areas starting at the bottom of page 5.2-9 is revised as follows:

*Outdoor Recreation Areas*

Outdoor recreation is critically important to the Delta economy, and the physical spaces in which recreational activities occur are visual resources contributing to the aesthetic character of the Delta. Recreation areas include State parks, wildlife areas, conservation lands, waterways, and other public open space areas (Figure 5.2-1). In addition, outdoor recreation areas include private docks and informal fishing areas along Delta waterways. ...

**OR3-11:**

The comment suggests that the PEIR should include the indirect effects of converting Farmland, lands subject to Williamson Act contracts, and land zoned for agricultural use to habitat under the Proposed Project and associated environmental justice. A basic purpose of CEQA is to inform decision-makers and the public about the potential significant environmental effects of proposed activities (CEQA section 15002 (a)(1). Environmental justice is not in and of itself an environmental impact. While economic or social effects of a project may be used to determine the significance of physical changes to the environment, they are not themselves treated as significant effects on the environment (CEQA section 15131 (a) and (b)).

In addition, as discussed in Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, the Proposed Project does not involve construction or operation of specific facilities or other specific physical actions by the Council. That is because the Council does not propose to construct or operate facilities or undertake other physical actions following adoption of the proposed Ecosystem Amendment. When specific projects are proposed by other entities in response to the proposed

Ecosystem Amendment, their project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis.

**OR3-12:**

As described on page 5.3-16 in Draft PEIR Section 5.3 *Agricultural and Forestry Resources*, approximately 52 percent of the Primary Planning Area is Farmland (Prime Farmland, Farmland of Statewide Importance, and Unique Farmland). The threshold under CEQA is that an impact related to agricultural resources is considered significant if the proposed project would convert Farmland (see page 5.3-13). Grazing land is classified as “Other Agricultural Land” and is not included in the acreage covered in the CEQA threshold of significance. Revised Mitigation Measures 7-1(a) and (c) would minimize impacts associated with the conversion of Farmland consistent with the CEQA threshold of significance and no change to the Draft PEIR will be made.

**OR3-13:**

See response OR3-12.

Farmland of Local Importance is classified as “Other Agricultural Land” and is not included in the acreage covered in the CEQA threshold of significance. Revised Mitigation Measures 7-1(a) and (c) would minimize impacts associated with the conversion of Farmland consistent with the CEQA threshold of significance and no change to the Draft PEIR will be made.

**OR3-14:**

The environmental setting in Draft PEIR Section 5.5, *Biological Resources – Aquatic*, includes numerous citations for the information included, including citations that support key statements. Many uncited statements provide general information on a setting topic, and while a particular statement may be uncited, often there are citations on that specific topic included.

The specific requests in this comment letter for including additional citations have been reviewed. See responses OR3-17, OR3-19, OR3-21 through OR3-24, OR3-26, OR3-27, and OR3-29 through OR3-32.

**OR3-15:**

The first paragraph on page 5.5-3 is revised as follows:

... As a consequence of these changes, some years, ~~critical~~ suitable habitat for Delta Smelt in the low-salinity zone (LSZ) can be located above the Sacramento-San Joaquin confluence area where habitat quality is relatively low. The LSZ consists of highly turbid, brackish waters with a salinity of 1 to -6 practical salinity units (psu) (Hobbs et al. 2019). This constriction of ~~critical~~ suitable habitat results in the distribution of Delta Smelt across a smaller area than has been observed historically (Feyrer et al. 2011). This constriction of ~~critical~~ suitable habitat ~~has~~ may also increased the likelihood that segments of the Delta Smelt population

will be exposed to chronic and cyclic environmental stressors, or catastrophic events.

**OR3-16:**

See response OR3-15.

**OR3-17:**

This citation was added to the last full sentence on page 5.5-4 as follows:

... Predation on Delta Smelt by non-native species is one of the many potential causes of the Delta Smelt decline (Sommer et al. 2007; Nobriga and Smith 2020).

This citation is also added to Draft PEIR Chapter 11, *References*.

**OR3-18:**

The subsection title on page 5.5-4 is revised as follows:

*Harmful ~~Invasive~~ Non-Native Species*

In addition, the third paragraph on page 5.5-4 is revised as follows:

Among the many introduced fish in the Delta, Threadfin Shad and Inland Silversides are some of the most ~~invasive~~ established, although Threadfin Shad abundance has apparently decreased in recent years (Feyrer et al. 2009; White 2019).

**OR3-19:**

See response OR3-14.

**OR3-20:**

The fourth paragraph on page 5.5-5 is revised as follows:

... This complex and altered hydrologic regime leads to a confusing environment for migratory fish (e.g., outmigrating juvenile salmon may end up in the central and southern Delta, where water temperatures are higher and water quality is otherwise unfavorable) and it may draws others, such as Delta Smelt, toward the pumps in the southern Delta (Kimmerer 2008; Grimaldo et al. 2009).

**OR3-21:**

This citation was added to the second sentence of the fourth paragraph on page 5.5-6 as follows:

... Turbidity reduces Largemouth Bass predation on Delta Smelt (Ferrari et al. 2014) and, because Delta Smelt are visual feeders, the presence of moderately turbid water provides a background that increases the smelt's visual acuity during daylight hours, leading to increased feeding success (Moyle et al. 2016).

This citation is also added to Draft PEIR Chapter 11, *References*.

**OR3-22:**

This citation was added to the first sentence of the fifth paragraph on page 5.5-6 as follows:

The water export facilities in the southern Delta, for the SWP and the CVP, have been considered contributing factors to the decline of fishes in the upper San Francisco estuary (Estuary) (Castillo et al. 2012; Kimmerer 2008). ...

This citation is also added to Draft PEIR Chapter 11, *References*.

The other references noted in the comment were not included because the information is covered by other sources already referenced in the Draft PEIR.

**OR3-23:**

This citation was added to the last sentence of the fifth paragraph on page 5.5-6 as follows:

... Consideration of hydrodynamics, water quality, and biological variables in export operations coupled with seasonality and knowledge of fish life history could help reduce fish entrainment (Grimaldo et al. 2009; Grimaldo et al. 2021).

This citation is also added to Draft PEIR Chapter 11, *References*.

**OR3-24:**

The third paragraph on page 5.5-6 is revised as follows:

... ~~Another~~ Other factors include is sediment “washout” from very high inflows in previous wet water years (Hestir et al. 2016), ~~and~~ proliferation of large beds of submerged aquatic vegetation that are “filtering” sediment (e.g., Brazilian waterweed) (Work et al. 2020), and declining wind speed (Bever et al. 2018).

The new citation is also added to Draft PEIR Chapter 11, *References*.

**OR3-25:**

Comment is noted and will be forwarded to the Council.

**OR3-26:**

The list in Section 5.5, *Biological Resources – Aquatic*, on page 5.5-7 of the types of contaminants with the potential to affect aquatic species that are thought to be present in the Delta is adequate and accurate for the environmental setting discussion and impact analysis in the Draft PEIR. Therefore, no change to the Draft PEIR will be made.

**OR3-27:**

The third paragraph on page 5.5-7 is revised as follows:

~~Contaminant effects are generally species-specific.~~ Pesticides and heavy metals are more likely to directly affect lower trophic levels, with potential negative effects on species composition and food web dynamics. ...



**OR3-28:**

The fourth paragraph on page 5.5-7 is revised as follows:

Recent research has demonstrated that some herbicides commonly used to control invasive aquatic weeds in the Delta, ~~such as penoxsulam, imazamox, fluridone, and glyphosate~~, can potentially have detrimental effects on Delta Smelt (Jin et al. 2018). ...

**OR3-29:**

The discussion under *Other Water Quality* Issues on page 5.5-8 describes the influence that other water quality parameters, including turbidity, has on the suitability of estuarine fish habitat. The information is adequate and accurate for the environmental setting discussion and impact analysis in the Draft PEIR. Therefore, no change to the Draft PEIR will be made.

See also response OR3-14.

**OR3-30:**

The information provided in the water temperature discussion on page 5.5-8 is adequate and accurate for the environmental setting discussion and impact analysis in the Draft PEIR. Therefore, no change to the Draft PEIR will be made.

See also response OR3-14.

**OR3-31:**

One of the references noted in the comment has been added to the Final PEIR. The others are not included because they do not address the subject. The last paragraph on page 5.5-11 is revised as follows:

... Delta Smelt, Delta Longfin Smelt, and Sacramento Spittail are estuarine species that spend their life cycle across a range of salinity levels, from freshwater habitat in the upper portions of the Delta to the saline waters of San Francisco Bay, and to the Pacific Ocean (Longfin Smelt) (Lewis et al. 2021)....

This citation is also added to Draft PEIR Chapter 11, References.

**OR3-32:**

The list of various stressors for Delta Smelt described on page 5.5-12 under *Delta Smelt* is adequate and accurate for the environmental setting discussion and impact analysis in the Draft PEIR. Therefore, no change to the Draft PEIR will be made.

See also response OR3-14.

**OR3-33:**

Starting each description of special-status fish species with accounts of the species status does not affect the adequacy or accuracy of the environmental setting discussion and impact analysis in the Draft PEIR. Therefore, no change to the Draft PEIR will be made.

**OR3-34:**

The following paragraph is added after the fourth paragraph on page 5.5-14:

Steelhead represent the anadromous form of the species *Oncorhynchus Mykiss*. While Steelhead are federally listed, the resident (non-anadromous) form of the species, Rainbow Trout, have no listing status. Unlike Steelhead, resident Rainbow Trout complete their entire life cycle in freshwater.

**OR3-35:**

The second paragraph on page 5.5-19 is revised as follows:

Aquatic vegetation in the Primary Planning Area can be separated into ~~two~~ three general categories: floating aquatic vegetation ~~and~~, submerged aquatic vegetation, and emergent vegetation (Ta et al. 2017). ...

**OR3-36:**

See response OR3-34.

**OR3-37:**

The fourth paragraph on page 5.5-25 is revised as follows:

... Striped Bass and American Shad also occur downstream of RBDD Colusa. ...

**OR3-38:**

All the impacts in Section 5.5 were determined to be significant and unavoidable. As described in Draft PEIR Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, on page 5.1-8, in many cases, revised mitigation measures, or equally effective feasible measures adopted as part of covered actions, would reduce impacts identified in this PEIR to a less-than-significant level. However, the specific locations, scale, and timing of possible future facilities are not known at this time, and the specific resources present within the project footprint of construction sites and new facilities in the Primary Planning and Extended Planning Areas cannot be determined. Therefore, in many cases, it is not possible to conclude that significant adverse effects would be avoided or reduced to a less-than-significant level. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed and implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

**OR3-39:**

The finding of significant and unavoidable is not based on the examples provided, and those examples are not intended to address all the revised mitigation measures. As described in response OR3-39, the findings are based on the fact that even though in many cases, revised mitigation measures, or equally effective feasible measures

adopted as part of covered actions (or recommended for non-covered actions), would reduce impacts identified in the PEIR to a less-than-significant level; because the specific locations, scale, and timing of possible future facilities are not known at this time, and the specific resources present within the project footprint of construction sites and new facilities in the Primary Planning and Extended Planning Areas cannot be determined. Therefore, it is not possible to conclude that significant adverse effects would be avoided or reduced to a less-than-significant level. Furthermore, implementation and enforcement of Revised Mitigation Measure 18-2(a) through (d), or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council and can and should be adopted by that other agency.

Nevertheless, it is acknowledged that the example noted by the commentor for non-covered actions does not clearly address the impact. Therefore, the third paragraph on page 5.15-20 is revised as follows to be consistent with the example provided for covered actions:

... For example, it may not be feasible to ~~construct new/permanent replacement recreational facilities~~ direct displaced users to underused facilities, or signage directing recreationists to an underused facility may be dismissed by recreationists if the alternate facility is far away. ...

#### **OR3-40:**

The last paragraph on page 5.7-27 is revised as follows:

A prehistoric archaeological resource that qualifies as a historical resource under CEQA generally qualifies for listing under Criterion 4 of the CRHR (CEQA Guidelines section 15064.5(a)(3)(D)) (NRHP Criterion D), although prehistoric resources can qualify for any CRHR/NEHP criterion. ...

#### **OR3-41:**

The thresholds of significance listed in Chapter 5.7, Cultural Resources, on pages 5.7-33 and 5.7-34 reflect the language in Appendix G of the CEQA Guidelines. Therefore, no change to the Draft PEIR will be made.

#### **OR3-42:**

Revised Mitigation Measure 10-3(c) references compliance with Section 106 for projects requiring federal funding or approval as a matter of clarification regarding the level of documentation required under the mitigation measure. No change to the Draft PEIR will be made.

#### **OR3-43:**

The intent of Revised Mitigation Measure 3-10(c), which is one subsection of Revised Mitigation Measure 3-10, is to state that *avoidance* of significant historic resources is the preferred method of mitigation. It does not imply the recommendation of unspecified mitigation measures.

In addition, project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are

proposed and implementation and enforcement of revised mitigation measures, or equally effective feasible measures, would be within the responsibility and jurisdiction of public agencies other than the Council.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis and implementation and enforcement of Delta Plan Mitigation Measures.

**OR3-44:**

The fourth paragraph on page 5.7-38 is revised for consistency with the CEQA Guidelines as follows:

Archaeological resources include any material remains of human life or activities that are at least ~~100~~ 50 years of age, and that are of archaeological interest. ...

**OR3-45:**

See response T1-4 for revisions to Revised Mitigation Measure 10-1(a).

**OR3-46:**

Intensive archaeological surveys under CEQA include consultation with the NAHC and local tribes under AB 52. Tribal resources are discussed in detail in Section 5.17, *Tribal Cultural Resources*. See Revised Mitigation Measure 10-1(a) in response T1-4.

**OR3-47:**

See response T1-6 for revisions to Revised Mitigation Measure 10-1(d).

**OR3-48:**

Revised Mitigation Measures 10-2(a) through (f) would minimize impacts on human remains. See response T1-8 for revisions to Revised Mitigation Measure 10-2(a). See also response OR3-42 No additional changes to the Draft PEIR will be made.

**OR3-49:**

The third paragraph on page 5.11-3 is revised as follows:

California, in an average water year (similar to 2010), receives about 200 million acre-feet of water from precipitation and imports from the Colorado River ~~from Colorado, Oregon, and Mexico~~. Approximately 50–60 percent of this total supply is used by native vegetation; evaporates to the atmosphere; provides some of the water for agricultural crops and managed wetlands (referred to as “effective precipitation”); or flows to Oregon, Nevada, the Pacific Ocean, or salt sinks, such as saline groundwater aquifers and the Salton Sea.

**OR3-50:**

The second paragraph on page 5.11-6 is revised as follows:

... Local surface storage and deliveries, together with reuse, account for about 40 percent of the state’s developed water supplies. Groundwater is also a

significant resource, supplying about ~~35~~ 40 percent of the state's water needs, and ~~40 percent or more~~ during droughts (PPIC 2017). ...

This citation is also added to Draft PEIR Chapter 11, References.

**OR3-51:**

The third paragraph on page 5.11-18 is revised as follows:

The primary consumptive water users in the Delta are agricultural and urban. These users divert water from the Delta and its tributaries at over 1,800 diversion points and may not have fish screens or meters. These diversions can total more than 5,000 cubic feet per second (cfs) in July and August (DWR 2009b). Return flows from these diversions are discharged back to the Delta. Local agencies, private entities, and agricultural users operate their own diversion infrastructure. After local users, the major users of Delta surface water are the CVP and SWP. In Suisun Marsh, there are 376 diversion points (although some are inactive) (SWRCB 2022) and the managed wetlands in the marsh receive water supplies through riparian and appropriative water rights. ...

**OR3-52:**

The fifth paragraph on page 5.11-62 is revised as follows:

Recently, urban areas in the San Joaquin Valley have been investigating some water recycling and water conservation measures. For example, water metering did not occur until recently in the city of Fresno. With metering and other measures in place, the City of Fresno has a goal to increase water savings via water conservation by 20 percent. The City of Modesto and the City of Turlock have implemented a new water recycling project referred to as the North Valley Regional Recycled Water Program. Through this program, the City of Modesto and the City of Turlock discharge treated wastewater effluent through a joint outfall to the Delta-Mendota Canal for transport downstream to agricultural water users (Reclamation 2016).

This citation is also added to Draft PEIR Chapter 11, References.

**OR3-53:**

The second paragraph on page 5.11-76 is revised as follows:

... Importation of surface water via the Hetch Hetchy and South Bay aqueducts and the development of an artificial recharge program have favored the rise of groundwater levels since 1965 halting permanent subsidence around 1970 and resulting in many decades of sustainable conditions (DWR 2004i:2, SCVWD 2016). ...

This citation is also added to Draft PEIR Chapter 11, References.

**OR3-54:**

The third paragraph on page 5.11-77 is revised as follows:

In the southern Bay Area, groundwater and surface water are connected through instream and offstream artificial recharge projects, in which surface water is delivered to water bodies that permit the infiltration of water to recharge ~~overdrafted~~ aquifers. ...

**OR3-55:**

The third paragraph on page 5.11-77 is revised as follows:

... Surface water is mostly losing to groundwater, because of current hydrologic conditions and groundwater pumping ~~as the groundwater basins have been pumped extensively~~ for various uses.

**OR3-56:**

The last paragraph on page 5.11-78 is revised as follows:

The Bay Area receives imported water from the SWP through the North Bay Aqueduct and the South Bay Aqueduct, and receives CVP San Felipe Division water via the Pacheco Tunnel and a series of conduits ~~San Felipe Canal~~ previously stored in the San Luis Reservoir.

**OR3-57:**

The fourth paragraph on page 5.11-79 is revised as follows:

... The South Bay Aqueduct conveys water from the Delta to Alameda and Santa Clara counties. SCVWD water supplies include SWP water via the South Bay Aqueduct, CVP water via the San Felipe Division of the CVP, and water delivered directly to retail suppliers from the SFPUC's regional water system ~~(Hetch Hetchy Aqueduct and Bay Area watershed)~~. The Hetch Hetchy Aqueduct also supplies water to San Francisco and San Mateo County.

**OR3-58:**

The fourth paragraph on page 5.11-79 is revised as follows:

... ~~Some water for agricultural uses within Monterey, San Benito, San Mateo, and Santa Cruz counties~~ also receives imported CVP water from the San Felipe Division of the CVP for agricultural use.

**OR3-59:**

The second paragraph on page 5.11-88 is revised as follows:

... However, urban runoff, wastewater discharges, agricultural tailwater, and groundwater seepage are sources of surface flows during the dry season. ~~During the past 30 years, dry weather flows have increased due to increased runoff from urban development (DWR 2009a:SC-22).~~

**OR3-60:**

The last paragraph on page 5.11-88 is revised as follows:

Salinity also affects recycled water use because it must either be removed for some uses, or be reduced to prevent habitat, plant, and groundwater degradation. High salt concentrations can affect groundwater recharge capability, and also affect crop yield by reducing or increasing the ability of minerals and nutrients to be absorbed by the plant, thereby adversely affecting growth rates. ...

**OR3-61:**

The comment does not address the adequacy or content of the Draft PEIR; therefore, no further response is required.

**OR3-62:**

The second paragraph on page 5.11-92 is revised as follows:

... The CRA system consists of 92 miles of tunnels, 63 miles of concrete canals, 54 miles of concrete conduits, 29 miles of siphons and five pumping plants, 16 hydroelectric plants, 9 reservoirs (over 1 million acre-feet of total capacity), and water treatment plants to move water to Metropolitan member agencies (Metropolitan 2017:1). ~~The CRA can supplies Metropolitan member agencies.~~

**OR3-63:**

A description of the Coachella Canal was added on the fourth paragraph on page 5.11-92 as follows:

The All-American Canal supplies water to the Coachella Valley Water District and Imperial Irrigation District. Colorado River supplies are diverted at ~~The canal system consists of the Imperial Diversion Dam and Desilting Works~~ into the 80-mile-long All-American Canal, then into the 123-mile-long Coachella Canal and appurtenant structures including a number of drop structures. The system has the capacity, ~~through water diversions from the Colorado River at Imperial Dam,~~ to provide irrigation water for nearly 600,000 acres of land in the Imperial and Coachella valleys (Reclamation 2017c). Imperial Dam and the All-American Canal are operated by Imperial Irrigation District; the Coachella Canal is operated by Coachella Valley Water District.

See Draft PEIR pages 5.11-91 and 5.11-92 for a discussion of the Quantification Settlement Agreement.

**OR3-64**

Table 5.11-14 on page 5.11-97 is revised as follows:

**Table 5.11-14**  
**Southern California Water Supply Transfers and Exchange Agreements**

Arvin-Edison Water Management Program	<u>Metropolitan amended the groundwater storage program with Arvin-Edison Water Storage District in 2008 to include the South Canal Improvement Project. The project increases the reliability of Arvin-Edison returning higher water quality to the California Aqueduct. In addition, Metropolitan and Arvin-Edison often enter into annual operational agreements to optimize program operations in any given year. The program storage capacity is 350,000 acre-feet. Storage of up to 250,000 acre-feet of water in Arvin-Edison groundwater basin during years when SWP is available for extraction during drier periods.</u>
Central Valley/State Water Project (SWP) Storage and Transfer and Program	<u>In dry, below-normal conditions, Metropolitan has increased the supplies received from the California Aqueduct by developing flexible Central Valley/SWP storage and transfer programs. Metropolitan has utilized approximately 122,000 acre-feet to supplement its SWP supplies during the recent 2016-2020 period. Of this total, approximately 90,000 acre-feet are from SWP storage program extractions in Semitropic, Arvin, Kern Delta, and Mojave; 13,000 acre-feet are from the San Gabriel Valley Municipal Water District program; and 19,000 acre-feet of SWP transfer supplies were purchased from the Yuba water purchase programs. Metropolitan has had success in purchasing options from Sacramento Valley irrigators of 145 thousand acre-feet in 2003, 113 thousand acre-feet from Sacramento Valley irrigators (as part of State Water Contractors Agreement for 145 thousand acre-feet of options) in 2005, 40 thousand acre-feet in 2008, and 34 thousand acre-feet in 2009. Also, Metropolitan has been successful in purchasing water for storage in the Central Valley. In 2009, 300 thousand acre-feet was purchased and stored as part of this program.</u>
Chuckwalla Groundwater Storage Program	<u>Colorado River Aqueduct water would be stored in the Upper Chuckwalla Groundwater Basin for recovery during droughts. A maximum of 150,000 acre-feet of storage is available from this project. This project is currently on hold due to drought conditions on the Colorado River.</u>
<u>Santa Clarita Valley Water Agency</u> <u>Castaic Lake Water Agency</u> /Buena Vista and Rosedale–Rio Bravo Water Storage Districts Agreement	<u>On January 1, 2018, Castaic Lake Water Agency, Newhall County Water District, Santa Clarita Water Division, and Valencia Water Company merged to become Santa Clarita Valley Water Agency. The Castaic Lake Water Agency–Santa Clarita Valley Water Agency has developed a long-term water agreement for 11,000 acre-feet per year of water from the Buena Vista and Rosedale–Rio Bravo Water Storage Districts. This agreement allows exchange or recharge of Kern River for SWP water.</u>
Desert Water Agency/Coachella Water District SWP Table A Water Transfer	<u>This agreement transfers water costs to Desert Water Agency to reduce Metropolitan's fixed water costs.</u>
Hayfield Groundwater Storage Program	<u>Colorado River Aqueduct water is stored in the Hayfield Groundwater Basin, which is located east of Palm Springs in Riverside County, for future extraction. Currently 70,000 acre-feet is in storage, but 400,000 acre-feet of storage is planned.</u>
Kern-Delta Metropolitan Water Management Program	<u>Storage of up to 250,000 acre-feet of SWP water in Kern-Delta's groundwater basin with a right to retrieve up to 50,000 acre-feet per year.</u>
Lower Coachella Valley Groundwater Storage Program	<u>Advance delivery and storage of CRA water for an exchange agreement with Coachella Valley Water District and Desert Water Agency for SWP water. Maximum storage is 500,000 acre-feet. This project is currently on hold due to drought conditions on the Colorado River.</u>
Mojave/Metropolitan Demonstration Water Exchange Program	<u>Metropolitan entered into a groundwater banking and exchange transfer agreement with Mojave Water Agency on October 29, 2003. This agreement was amended in 2011 to extend the term of the program through 2035 and to allow for the cumulative storage of up to 390,000 acre-feet. Exchange of SWP water on the basis of 1 acre-foot of return water for each acre-foot of water previously delivered to Mojave Water Authority.</u>



**Table 5.11-14****Southern California Water Supply Transfers and Exchange Agreements**

Quantification Settlement Agreement transfers	Transfer of water from Imperial Irrigation District (IID) to San Diego County Water Authority (SDCWA) based on water conservation measures including lining of the All-American and Coachella canals (77,000 acre-feet per year) and 16,000 acre-feet per year from other canal lining. The Quantification Settlement Agreement also includes other water transfers of water including 10,000 acre-feet per year (ramping up to 200,000 acre-feet per year for up to 75 years) from IID to SDCWA, 110,000 acre-feet per year from IID to Metropolitan, 103,000 acre-feet per year from IID to Coachella Valley Water District, and between 25,000 and 111,000 acre-feet annually from the Palo Verde Irrigation District to Metropolitan.
Semitropic Water Banking and Exchange Program	<u>Metropolitan has a groundwater storage program with Semitropic Water Storage District located in the southern part of the San Joaquin Valley. The maximum storage capacity of the program is 350,000 acre-feet. Storage of SWP in Semitropic WSD's groundwater basin during wet years, which can be withdrawn during dry years for supply. Maximum storage capacity is 1,650,000 acre feet.</u>
Tulare Basin Storage District Groundwater Replenishment Project	The Coachella Valley Water District has purchased 9,900 acre-feet per year of SWP water from the Tulare Lake Basin Water Storage District for groundwater replenishment. The Coachella Valley Water District also has purchased 16,000 acre-feet per year of SWP water from the Berrenda Mesa Water District.
Yuba Dry Year Water Purchase Program	<u>In December 2007, Metropolitan entered into an agreement with DWR providing for Metropolitan's participation in the Yuba Dry Year Water Purchase Program between Yuba Water Agency and DWR. This program provides for transfers of water from the Yuba Water Agency during dry years through 2025. Metropolitan entered into an agreement with Yuba County Water Agency allows purchase of dry year water through 2035.</u>

Sources: Metropolitan 2010; Metropolitan 2021, Semitropic 2020b

This citation is also added to Draft PEIR Chapter 11, *References*.

**OR3-65:**

The discussion of the Coordinated Operations Agreement page on pages 5.11-105 through 5.11-107 is revised as follows:

**Coordinated Operations Agreement**

The SWP and CVP use a common water supply in the Delta. The associated water rights are conditioned by the SWRCB to protect the beneficial uses of water individually and jointly for the SWP and CVP for the protection of beneficial uses in the Sacramento Valley and the Delta estuary. The Coordinated Operations Agreement (COA) (Public Law 99-546), signed in 1986, defines the SWP and CVP facilities and their water supplies; sets forth procedures for coordination of operations; identifies formulas for sharing joint responsibilities for meeting Delta standards, as the standards existed in SWRCB Decision 1485 (D-1485), and other legal uses of water (as described below in the discussion of State regulatory processes); identifies how unstored flow will be shared; sets up a framework for exchange of water and services between the SWP and CVP; and provides for periodic review of the agreement. In December 2018, DWR and Reclamation subsequently negotiated an addendum to the 1986 COA that was issued in December 2018.

In-basin uses, or legal uses of water in the Sacramento Basin, as defined by the COA, include water required under the SWRCB D-1485 Delta standards for

1 water quality protection for agricultural, municipal and industrial, and fish and  
 2 wildlife uses. The SWP and CVP are obligated to ensure that water is available  
 3 for these uses, but the degree of obligation is dependent on several factors and  
 4 changes throughout the year.

5 “Balanced water conditions” are defined in the COA as periods when it is  
 6 mutually agreed that releases from upstream reservoirs plus unregulated flows  
 7 approximately equal the water supply needed to meet Sacramento Valley in-  
 8 basin uses plus exports. “Excess water conditions” are periods when it is  
 9 mutually agreed that releases from upstream reservoirs plus unregulated flow  
 10 exceed Sacramento Valley in-basin uses plus exports.

11 ~~During excess water conditions, sufficient water is available to meet all beneficial~~  
 12 ~~needs, and the CVP and SWP are not required to supplement the supply with water~~  
 13 ~~from reservoir storage. Under Article 6(g) of the COA, Reclamation and DWR have~~  
 14 ~~the responsibility (during excess water conditions) to store and export as much~~  
 15 ~~water as possible, within physical, legal, and contractual limits. During balanced~~  
 16 ~~water conditions, the SWP and CVP share the responsibility of meeting in-basin~~  
 17 ~~uses. When water must be withdrawn from reservoir storage to meet in-basin uses,~~  
 18 ~~75 percent of the responsibility is borne by the CVP and 25 percent is borne by the~~  
 19 ~~SWP. When unstored water is available for export while balanced water conditions~~  
 20 ~~exist, the sum of CVP stored water, SWP stored water, and the unstored water for~~  
 21 ~~export is allocated 45 and 55 percent to the SWP and CVP, respectively.~~

22 ~~Implementation of the COA principles has evolved since 1986 due to changes in~~  
 23 ~~facilities (including the North Bay Aqueduct), as well as new water quality and flow~~  
 24 ~~standards established by SWRCB D-1641 (described below in the discussion of~~  
 25 ~~State regulations) and the USFWS and NMFS BiOps described below). For~~  
 26 ~~example, water temperature controls at Shasta, Trinity, and Whiskeytown dams~~  
 27 ~~have changed the pattern of storage and withdrawals for the purpose of improving~~  
 28 ~~temperature control and managing cold water pool resources.~~

29 ~~Such constraints have reduced the CVP’s capability to respond efficiently to~~  
 30 ~~changes in Delta export or outflow requirements. Periodically, temperature~~  
 31 ~~requirements have caused the timing of the CVP releases to be significantly~~  
 32 ~~mismatched with Delta export capability, resulting in loss of water supply. On~~  
 33 ~~occasion, and in accordance with Articles 6(h) and 6(i) of the COA, the SWP~~  
 34 ~~has been able to export water released by the CVP for temperature control in~~  
 35 ~~the Sacramento River. The installation of the Shasta temperature control device~~  
 36 ~~has significantly improved Reclamation’s ability to match reservoir releases and~~  
 37 ~~Delta needs.~~

38 ~~Another example of requirements not included in the 1986 COA is the objectives~~  
 39 ~~in the 1995 Bay Delta Plan, VAMP, and SWRCB in D-1641 (described below).~~  
 40 ~~The 1986 COA water supply sharing formula was used to meet D-1641 Delta~~  
 41 ~~outflow and salinity-based standards. SWRCB D-1641 also contains “export~~  
 42 ~~limitation” criteria such as the export-to-inflow ratios and San Joaquin River pulse~~  
 43 ~~period “export limits.”~~

~~The 1986 COA affirmed the SWP's commitment to provide replacement export capacity for restrictions to the CVP operations in May and June under SWRCB D-1485. Subsequent changes included in SWRCB D-1641, water demand, and other export constraints reduced the available surplus capacity at the Banks Pumping Plant up to 195,000 acre-feet of pumping capacity, and diminished the water delivery anticipated by the CVP under the 1986 COA framework. The reductions in water delivery accomplishments are considered to be part of CVPIA (b)(2) water.~~

~~On June 1, 2016, Reclamation and DWR began review of the COA as prescribed in Article 14(a), for the purpose of determining whether revisions to COA were warranted. The process was initiated following a series of preliminary meetings that were conducted since August 2015. From June 2016 through July 2018, numerous meetings were held, which also included CVP and SWP contractors. In August 2018 Reclamation issued a notice of negotiation, and DWR and Reclamation subsequently negotiated an amendment to the COA that was issued in December 2018. Key Sections of the COA that were updated in 2018 were: Article 6(c) on sharing of responsibility for meeting in-basin use; Article 10(b) on CVP use of the Banks Pumping Plant; Article 10(i) on sharing of capacity under export restrictions; and Article 14(a) on the periodic review.~~

#### **OR3-66:**

The last paragraph on page 5.11-114 and the first paragraph on page 5.11-115 are revised as follows:

~~Pursuant to Wat. Code sections 10610–10657, as last amended by SB 606318 in 20182004, the Urban Water Management Planning Act requires all urban water suppliers with more than 3,000 service connections or water use of more than 3,000 acre-feet annually to update their submit an urban water management plans (UWMP) to DWR at least once every five years demonstrating water supply reliability in normal, single dry, and multiple dry water years, and update the plan on or before December 31 in years ending in 5 and 0. SB 606318 is the 18th amendment to the original bill requiring a UWMP, which was initially enacted in 1983. Amendments to SB 318 have focused on ensuring that the UWMP emphasizes and addresses drought contingency planning, water demand management, reclamation, and groundwater resources.~~

Page 5.11-121 of the Draft PEIR describing Assembly Bill 1668 and Senate Bill 606 Water Conservation and Drought Planning (2018), is a later page of the same Draft PEIR subsection, 5.11.3 Regulatory Setting, and does not need to cross-reference earlier pages of the same section. The suggested change would not affect the adequacy or accuracy of the setting discussion and impact analysis of the Draft PEIR. Therefore, no additional change to the Draft PEIR will be made.

#### **OR3-67:**

Draft PEIR Chapter 4, *General Types of Activities, Potential Projects, and Construction Methods that Could Result with Implementation of the Proposed Ecosystem Amendment*, subsection 4.2.1, Changes in Water Flows, describes the role of the State Water

Resources Control Board (SWRCB) in preserving, enhancing, and restoring the quality of California's water resources for the protection of the environment, public health, and beneficial uses. The Bay-Delta Water Quality Control Plan (Bay-Delta Plan) identifies beneficial uses of water, establishes water quality and flow objectives needed to protect those uses, and establishes a program of implementation for achieving the objectives (SWRCB 2019). Implementation of projects or actions by entities other than the Council related to restoration, protection, and enhancement of natural communities in the Delta has the potential to indirectly affect water flows in the Delta through potential changes in hydrodynamic conditions and salinity. Because Central Valley Project (CVP) and State Water Project (SWP) facilities in the Delta and upstream watersheds are operated to meet current Delta salinity standards at several locations pursuant to Water Right Decision 1641 for implementation of the Bay-Delta Plan, changes to operations of these facilities and resultant changes in flows to comply with salinity standards may be required.

Draft PEIR Impact 5.18-1 on page 5.11-130 discusses how real-time operations of upstream reservoirs under the CVP and SWP have sufficient flexibility to adjust to any changes that could occur from implementation of projects or actions taken in response to the proposed Ecosystem Amendment, and to ensure that salinity and X2 standards continue to be met. Impact 5.11-1 also states that the effects of restored habitats, constructed facilities, and operational changes implemented by other entities in response to the proposed Ecosystem Amendment have the potential to result in beneficial effects or localized, temporary adverse impacts on water quality in the Primary Planning Area. However, the specific locations, scale, implementation and timing of possible future facilities are not known at this time. These are all factors necessary to identify water quality impacts of operational changes associated with the proposed Ecosystem Amendment. Project-level impacts would be addressed in future environmental analysis conducted by lead agencies at the time such projects are proposed.

Specific to water supply, as described under Impact 5.18-2 on page 5.18-29 of the Draft PEIR, impacts were determined to be less than significant. Certain types of projects implemented in response to the proposed Ecosystem Amendment could have effects on water supply availability in the Delta if water levels are reduced near diversion intakes (including those of small community water systems). However, anticipated changes in water levels would not impede operations of existing diversion facilities or substantially change water supply availability to water users in the Delta. Once specific implementation projects consistent with the Proposed Project are developed, their impacts would be more fully evaluated in future project-level environmental documents prepared by the lead agencies for the proposed projects.

Furthermore, as stated in Section 5.1, *Approach to the Environmental Analysis*, on page 5.1-6, the analysis in the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances.

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review.

**OR3-68:**

The third paragraph on page 5.15-5 is revised as follows:

... The planning area for the Delta Trail includes the ~~proposed~~ Sacramento–San Joaquin Delta National Heritage Area which was designated in 2019 as the first National Heritage Area (NHA) in California (DPC 2015).

**OR3-69:**

Revised Mitigation Measure 4-4(c) in Section 5.6, *Biological Resources, Terrestrial*, requires expanding existing wildlife refuges and management areas, and establishing new ones, in or near wetland areas used by migratory waterfowl and shorebirds to protect habitat for migratory waterfowl and shorebirds. This measure applies to a broad suite of species that aren't necessarily threatened or endangered species; therefore, expanding mitigation options to offset impacts to these species via HCPs or mitigation banks is not entirely equivalent to the proposed mitigation. HCPs are focused on threatened/endangered species pursuant to Section 10 of the Federal Endangered Species Act. Mitigation banks are associated with creation/preservation of wetlands/other waters of the U.S – which would be potential habitat for waterfowl and shorebirds; however, it would not be expected that these aquatic resources would be managed specifically for the benefit of waterfowl and/or shorebirds (which is part of the language listed in Revised Mitigation Measure 4-4(c). While the comment does not specifically mention species conservation banks, those also would generally be focused on protection of federal and state listed species.

Revised Mitigation Measure 4-4(d) requires the protection, restoration, and enhancement of the connectivity of habitats, including, *but not limited to*, wetland and riparian habitats that function as migration corridors for wildlife species. In order to provide additional flexibility in providing for migration corridors, Revised Mitigation Measure 4-4(d) is revised as follows:

4-4(d) Protect, restore, and enhance connectivity of habitats, including but not limited to wetland and riparian habitats that function as migration corridors for wildlife species (similar to how it has been implemented through programs such as the California Essential Habitat Connectivity Project). Acquire areas with potential to increase connectivity between existing habitats, protect these areas in perpetuity through the acquisition of conservation easements, deed restrictions, or similar tools, and restore the habitat for wildlife species in these areas. As an alternative, participate in existing mitigation banks or HCPs that provide suitable habitat for affected wildlife species. Habitat restoration might be accomplished by establishing suitable hydrology or other physical conditions for desirable vegetation, planting desirable vegetation, fencing and managing grazing, and other means.

**OR3-70:**

The fourth paragraph on page 5.17-1 is revised as follows:

... Tribal cultural resources also include prehistoric archaeological sites and may include human remains as discussed in Section 5.7, *Cultural Resources*;

ethnographic sites; and historic-era landscapes and sites occupied, used, or spiritually and culturally valued by Native Americans.

**OR3-71:**

The regulatory setting information describing traditional cultural properties (TCPs) is appropriate for the tribal cultural resources section. Therefore, no change to the Draft PEIR will be made.

**OR3-72:**

Guidance provided under local agency jurisdiction is separate from state guidelines, which are included on pages 5.17-3 through 5.17-5. While not specific to tribal cultural resources, the local policies addressing human remains and archaeological resources are helpful in providing guidance on tribal cultural resources prior to the local agency updating their General Plan documents. Therefore, no change to the Draft PEIR will be made.

**OR3-73:**

The Council complied with the requirements of the CEQA statute, Pub. Resources Code section 21080.3.1(b) (enacted by Assembly Bill 52). The process was fully described in Chapter 1, *Introduction*, in subsection 1.3.2 Notification of California Native American Tribes on pages 1-5 through 1-6.

In addition to formal consultation, Council staff received written feedback and engaged in multiple discussions with representatives of the Buena Vista Rancheria of Me-Wuk Indians and Yocha Dehe Wintun Nation during Fall 2021 and Winter-Spring 2022. Also see response T1-3. Based on input from tribal representatives, Council staff revised and incorporated language into the Ecosystem Amendment that encourages coordination with tribes early in the project planning phase, recognition of traditional knowledge, and compliance with all relevant statutes and the Public Resources Code.

**OR3-74:**

Peat fires are described in the Environmental Setting for the Primary Planning Area in Draft PEIR Section 5.19, *Wildfire*, on page 5.19-4. In order to address the potential that peat soils and associated organic material could be present in construction and/or staging areas, the third paragraph on page 5.19-12 is revised as follows:

Although the majority of the Primary Planning Area is located in the Delta where the risk of fire is considered low and the topography is relatively flat, vegetation and peat soils could be present in construction and/or staging areas. ...

**OR3-75:**

Revised Mitigation Measure 6-2 in Section 5.12, *Land Use and Planning*, requires that in order to compensate for the loss or reduction in environmental values due to a conflict with an adopted plan or policy that the “following or equally effective measures” be implemented. It is not intended that all of the measures be implemented to minimize the impact, but instead that the ones listed or others that are equally effective in minimizing the impact be implemented. Therefore, no change to the Draft PEIR will be made.

**OR3-76:**

The analysis in Draft PEIR Section 5.16, *Transportation*, includes the threshold of significance addressing conflicts or inconsistencies with CEQA Guidelines section 15064.3(b) and discusses the current requirements for determining the significance of transportation impacts and use of vehicle miles traveled (VMT), which is a measure of the total number of miles driven to or from a destination (see page 5.16-23). Consistent with the CEQA Guidelines, Impact 5.16-2 evaluated possible conflicts with CEQA Guidelines section 15064.3(b) and found them to be less than significant (see the discussion on pages 5.16-33 through 5.16-36). It is further explained in the discussion of this impact that projects undertaken by other entities in response to the proposed Ecosystem Amendment would require their own project-level VMT analyses which would be included in future project-level environmental documents prepared by the lead agencies for the proposed projects.

Impact 5.16-1 evaluates the potential for projects implemented in response to the proposed Ecosystem Amendment to conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities. The discussion of this impact included VMT. This impact was determined to be potentially significant for projects (both covered actions and non-covered actions) that could be implemented in the Primary and Delta Watershed Planning Areas. Revised Mitigation Measures 19-1(a) through (i) would minimize impacts on the circulation system including transit, roadway, bicycle, and pedestrian facilities. Revised Mitigation Measure 19-1(d) was revised to incorporate VMT.

**OR3-77:**

Revised Mitigation Measures 8-1(g), 18-1(a), and 18-2(c) and (d) are revised to replace “original” with “pre-construction” and Revised Mitigation Measure 18-1(a) is further revised to clarify “recreational opportunities” as follows:

8-1(g) Conduct only partial vegetative clearing of the construction footprint rather than clearing the entire area; partial clearing would leave islands of vegetation and result in a more natural look. Use irregular clearing shapes with feathered edges instead of hard edges to promote a more natural effect. Temporarily disturbed areas shall be restored to ~~original~~ pre-construction conditions.

18-1(a) Projects shall be sited in areas that will not impair, degrade, or eliminate recreational facilities and opportunities. If this is not feasible, projects shall be designed such that recreational facilities and access to recreational opportunities (including bird-watching, hunting, recreational fishing, walking, and on-water recreation (e.g., boating or kayaking)) will be avoided or minimally affected. Once project construction activities have been completed, any affected recreational facilities and opportunities should be restored to ~~original~~ pre-construction conditions if possible. Where impacts to existing recreational facilities and opportunities are unavoidable, new permanent or replacement facilities ~~and opportunities~~ shall be constructed

- 1           that are similar in type and capacity, and access to recreational opportunities  
2           restored, if feasible.
- 3           18-2(c) If the increase in use is temporary, the condition of the facilities prior  
4           to construction shall be documented, and once use returns to existing  
5           conditions, degraded facilities shall be rehabilitated or restored to their  
6           ~~original~~ pre-construction condition.
- 7           18-2(d) Where impacts to existing facilities are unavoidable, affected facilities  
8           shall be restored to their ~~original~~ pre-construction condition once project  
9           construction activities are complete. If this is not feasible, new permanent or  
10          replacement facilities shall be constructed that are similar in type and capacity.
- 11       See response ST2-5 for further discussion of Council's authority to adopt and modify  
12       mitigation measures that were previously adopted and incorporated into the Delta Plan.
- 13       See response ST2-9 for definition of "recreational opportunities".



### 1 **3.2.5 Comments from Individuals**

- 2 This section contains a copy of the comment letters received from individuals (see  
3 Table 3-6), and responses.

**Table 3-6**

**Individuals Providing Comments on Draft Program Environmental Impact Report**

Letter #	Individuals
I1	Coats, Francis
I2	Meserve, Osha

**From:** [Francis Coats](#)  
**To:** [Delta Council Ecosystem Amendment](#)  
**Subject:** Delta Plan Ecosystem Amendment PEIR  
**Date:** Monday, September 27, 2021 4:42:39 PM

Some people who received this message don't often get email from fecoats@msn.com. [Learn why this is important](#)

Friends:

The draft PEIR, at many separate points, fails to recognize the rights of members of the public, and fails to identify the true extent of the lands in the delta subject to public use.

A member of the public has the right to be on a navigable water, including the temporarily dry banks of the water below ordinary high water mark, and there engage in recreational activities. A water is navigable if it is susceptible to navigation even if only in small motorized or oar powered small craft, and even if only for recreational purposes. Note that in the delta and in the Central Valley generally, immense tracts of land were below ordinary high water mark historically, and remain subject to the public rights to use even though subsequently protected by levees or drained by canals and pumps. In re Baker v. Mack ; National Audubon Society v. Superior Court (Mono Lake); California v. Superior Court (Lyon), the Clear Lake case.

A member of the public has the right to fish from and on state-owned land, excepting only that land currently being used for governmental purpose incompatible with public fishing. In California, land held in the name of a county or other local agency is state-owned land. Section 25, article I, Cal. Const., California v. San Luis Obispo Sportsmans Assc. (1978) 22 Cal. 3d 440;

In California, since November 8, 1910, "[N]o land owned by the state shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon. In those cases in which the reservation does not expressly appear in the grant, the courts will read it into, or incorporate it in, the grant. In the alternative, a grant without the reservation may be void. As mentioned above, land held in the name of a local agency is state-owned land. There is no exception for lands purchased from private parties or lands intended for or actually subject to governmental use. Section 25 article I, Cal. Const., California v. San Luis Obispo Sportsman's Assc.

In California, since 1943, No land owned by the State which fronts on or is near a navigable water and provides the only convenient access to the water, or which provides the only convenient access to other state-owned lands, shall ever be sold, leased or rented without reserving convenient access to the navigable water or to the other state-owned lands (Public Resources Code section 6210.4, 6210.5). Again, it is not unreasonable to anticipate that transaction which fails to comply with these laws may be void.

As a result of the above, the lands upon which a member of the general public may enter and engage in recreational activities on is much broader than merely the identified parks and wildlife areas.

Further, the Public Trust Doctrine provides a procedural requirement. A public agency considering a decision that may affect a public trust interest, such as the public right to enter upon and use these lands: must consider the effect of it decision on the public trust interest, avoiding so far as feasible

adversely affecting the interests. This consideration must be given in a public manner providing for public participation.

Compliance with CEQA is not necessarily compliance with the Public Trust Doctrine.

The identification of “stakeholders” and “recreation facilities” is misleading in a world where every member of the public has an individual’s right to enter and engage in recreational activity on navigable water including temporarily dry banks to the high water mark; and, to enter and fish on state-owned land (including local agency owned land) and on land formerly owned by the state and transferred out after November 8, 1910.

Also, please note Lane v. City of Redondo Beach, in which the court suggested that an agency could not vacate or abandon a public access to a navigable water. Lands subject to the fishing reservation were not mentioned, but there is no reason to suspect they are any less protected.

The PEIR deals in generalizations and attempts to lay out the manner in which decisions will be handled when questions arise (all this before and specific action is identified). The gist of my comment is that the PEIR ought to mention the above described public rights and laws adopted to protect those rights, and include them among those matters which will be considered when a question is faced. This will include recognizing the full extent of lands in the delta subject to public rights of use; and, the rights of any member of the public to access and use these lands. California places a high value on public access to the natural environment. That has not evaporated. Francis Coats; 3392 Caminito Avenue, Yuba City, CA 95991; [fecoats@msn.com](mailto:fecoats@msn.com); (530) 701-6116.



I1-1  
cont.



I1-2

Sent from [Mail](#) for Windows

**I1 Coats, Francis****Responses to Comments from I1 Coats, Francis****I1-1:**

As stated in Chapter 2, *Delta Plan Background*, on page 2-5, the Public Trust Doctrine is applicable to the Delta watershed. The coequal goal of protecting, restoring, and enhancing the Delta ecosystem is consistent with the Public Trust Doctrine and, among other things, promotes and protects fishing, recreational, and ecological public trust uses in the Delta watershed. Achieving the coequal goals is the primary and fundamental purpose of the Delta Plan (see page 2-1).

Information about the Public Trust Doctrine and public trust resources is also included in the Draft PEIR on page 5.11-114. The comment does not describe any inconsistency between the Proposed Project and the Public Trust Doctrine. Because projects implemented in response to the proposed Ecosystem Amendment by other entities would be implemented in compliance with relevant federal, State, and local laws, regulations and ordinances, public trust resources would be protected. In addition, the Draft PEIR evaluates impacts to public trust resources such as aquatic biological resources (Section 5.5), hydrology and water quality (Section 5.11), and recreational resources (Section 5.15).

See Topical Response 2: Approach to the Environmental Analysis for further discussion of the approach to the environmental analysis, including a discussion of Program vs. Project level environmental review, and how the Draft PEIR assumes that the projects or activities recommended in the proposed Ecosystem Amendment would be constructed and operated in compliance with relevant federal, State, and local laws, regulations and ordinances.

**I1-2:**

See response I1-1.

**From:** [Henderson, Jeff@DeltaCouncil](mailto:Henderson.Jeff@DeltaCouncil)  
**To:** [Griffith, Kaylee@DeltaCouncil](mailto:Griffith.Kaylee@DeltaCouncil); [Ross, Harriet@DeltaCouncil](mailto:Ross.Harriet@DeltaCouncil)  
**Cc:** [Livengood, Avery@DeltaCouncil](mailto:Livengood.Avery@DeltaCouncil)  
**Subject:** FW: Notice of Availability for the Delta Plan Ecosystem Amendment Draft Environmental Impact Report  
**Date:** Monday, September 27, 2021 1:59:02 PM  
**Attachments:** [image001.png](#)

See below from Osha re: Good Neighbor Checklist items. We can clean these up in the Final.

**Jeff Henderson, AICP (He/Him/His)**

O: (916) 902-6490 | M: (916) 842-9333

---

**From:** Osha Meserve <[Osha@semlawyers.com](mailto:Osha@semlawyers.com)>  
**Sent:** Monday, September 27, 2021 1:04 PM  
**To:** Henderson, Jeff@DeltaCouncil <[Jeff.Henderson@deltacouncil.ca.gov](mailto:Jeff.Henderson@deltacouncil.ca.gov)>  
**Subject:** FW: Notice of Availability for the Delta Plan Ecosystem Amendment Draft Environmental Impact Report

Hi Jeff,

Good to see this is out finally!

It looks like staff did a pretty good job getting rid of the references to "DWRs" Good Neighbor checklist in the new material.

But it looks like in the PM language it still says DWR. I am looking at pdf page 451:

*PM ER RB-01. 100 percent of proposed actions that include ecosystem protection, enhancement, or restoration use the **California Department of Water Resources (DWR)** Good Neighbor Checklist to avoid or reduce conflicts with existing uses.*

I think you would want to delete the DWR reference from the PM also.

Also pdf pp. 244-247 has the actual Good Neighbor checklist language that we worked on together. I see on page 246 there is a reference to my office having transmitted these materials to DSC. It is in kind of an odd place since it comes right before the references. Probably doesn't matter but just wanted to point that out too.

Any progress on drought planning?

Best,  
 Osha

Osha R. Meserve  
 (916) 455-7300

---

**From:** Farnsworth, Sarah@DeltaCouncil <[Sarah.Farnsworth@deltacouncil.ca.gov](mailto:Sarah.Farnsworth@deltacouncil.ca.gov)>  
**Sent:** Monday, September 27, 2021 12:14 PM  
**To:** Delta Council Ecosystem Amendment <[ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)>

I2-1

I2-2

**Subject:** Notice of Availability for the Delta Plan Ecosystem Amendment Draft Environmental Impact Report

The Delta Stewardship Council (Council) has issued a Notice of Availability (NOA) of a Draft Program Environmental Impact Report (PEIR) for the proposed amendments to Delta Plan Chapter 4 - ***Protect, Restore, and Enhance the Delta Ecosystem***. Pursuant to the California Environmental Quality Act (CEQA), today's release of the NOA begins a 64-day public comment period. This comment period will run from September 27 - November 30, 2021. Please find the NOA attached for details.

Comments received on the Draft PEIR via mail or email, following the instructions detailed in the NOA, or read orally during the public hearing portion of the November 18 Council meeting will be considered in the development of the Final PEIR. An agenda with information on virtual attendance will be distributed at least 10 days ahead of the meeting.

To access the NOA, Draft PEIR, and more information, please visit the Delta Plan Amendments web page at <https://deltacouncil.ca.gov/delta-plan/amendments>, or email [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov).

Thank you,



**Sarah Farnsworth (she/her/hers)**  
*2021 CA Sea Grant Fellow*  
Delta Stewardship Council  
Planning and Performance Division

715 P Street, 15-300  
Sacramento, CA 95814

1 ***I2 Osha Meserve***

2 **Responses to Comments from I2 Osha Meserve**

3 **I2-1:**

4 This comment addresses the proposed amendment and the Delta Plan, and not the  
 5 adequacy or content of the Draft PEIR. This comment addresses how the Good  
 6 Neighbor Checklist is described in the Proposed Amendment at page C-4.3 25, and that  
 7 it was a jointly created document. A change has been made to remove attribution to  
 8 “DWR” and is included in Appendix A of the Final PEIR.

9 **I2-2:**

10 This comment addresses the proposed amendment and the Delta Plan, and not the  
 11 adequacy or content of the Draft PEIR. The comment also requests a correction to the  
 12 reference to the office that transmitted specific materials to the Council, as described on  
 13 page C-3.4 3 in Appendix C, Text of Proposed Delta Plan Ecosystem Amendment of the  
 14 PEIR. This change has been made and is included in Appendix A of the Final PEIR.

1   **3.2.6   Draft PEIR Public Meeting Transcript**

- 2   This section contains a copy of the public meeting transcript (PMT) taken at the public  
3   meeting held during the Draft PEIR public review period on November 18, 2021.  
4   Responses to verbal comments received during the meeting are also provided.



BEFORE THE  
DELTA STEWARDSHIP COUNCIL  
A California State Agency

In the matter of: )  
Regular Meeting: )  
Item 8 )  
\_\_\_\_\_ )

WORKSHOP

REMOTE VIA ZOOM

THURSDAY, NOVEMBER 18, 2021

10:00 A.M.

**ORIGINAL**

Reported By: Martha Nelson

## APPEARANCES:

### DELTA STEWARDSHIP COUNCIL

#### Councilmembers Present

Susan Tatayon, Chair  
Maria Mehranian, Councilmember  
Don Nottoli, Councilmember  
Christy Smith, Councilmember  
Virginia Madueno, Councilmember

#### Staff Present

Jessica Pearson, Executive Director  
Jeff Henderson, Deputy Executive Director  
Beck Barger, Clerk

#### Public Comment

Brett Baker, Central Delta Water Agency  
Osha Meserve, Local Agencies of the North Delta  
Matt Holmes  
Matt Conover

## INDEX

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| 8. | Workshop on the Draft Program Environmental Impact Report for the Proposed Amendment of Chapter 4 of the Delta Plan, Protect, Restore, and Enhance the Delta Ecosystem | 4 |
|----|--|---|

1 Thursday, November 18, 2021 10:01 a.m.

2 P R O C E E D I N G S

3 AGENDA ITEM 8 BEGINS

4 CHAIR TATAYON: We will now move on to  
5 agenda item eight, a workshop on the Draft  
6 Program Environmental Impact Report for the  
7 Proposed Amendment of Chapter 4 of the Delta  
8 Plan, Protect, Restore, and Enhance the Delta  
9 Ecosystem.

10 Just to let folks know, this workshop is  
11 being recorded by a reporter to ensure a complete  
12 and accurate notation of all comments. Speakers  
13 will be limited to three minutes per person. And  
14 commenters will be called in the order their  
15 requests are received. So Jessica Pearson will  
16 be introducing the item.

17 Jessica?

18 EXECUTIVE OFFICER PEARSON: Thank you,  
19 Chair.

20 By way of background, the Council elected  
21 to amend its Delta Plan Ecosystem chapter, soon  
22 after the Brown Administration, in 2015, decided  
23 to move away from the then-proposed Bay Delta  
24 Conservation Plan.

25 Can you hear me?

1 COUNCILMEMBER MEHRANIAN: Now we can.

2 CHAIR TATAYON: Now we can.

3 EXECUTIVE OFFICER PEARSON: Okay.

4 CHAIR TATAYON: Yeah.

5 EXECUTIVE OFFICER PEARSON: All right.

6 Let me start again. Sorry.

7 Okay, so by way of background, the  
8 Council elected to amend its Delta Plan Ecosystem  
9 chapter soon after the Brown Administration, in  
10 2015, decided to move away from the then-proposed  
11 Bay Delta Conservation Plan. The Bay Delta  
12 Conservation Plan had included, in part, a  
13 comprehensive ecosystem plan for the Delta.

14 The original Delta Plan Chapter 4 adopted  
15 in 2013 for the Ecosystem Restoration Chapter, as  
16 we call Chapter 4, was therefore developed with  
17 an expectation that the Bay Delta Conservation  
18 Plan would eventually be incorporated into the  
19 Delta Plan. That was the legislature envisioned.

20 When it became clear that that no longer  
21 would happen, the Council decided to move ahead  
22 with this amendment to make sure that California  
23 would have a blueprint for large-scale ecosystem  
24 improvement and restoration in the Delta. The  
25 Council has been advising Staff and reviewing

1 iterative drafts of the Ecosystem Amendment since  
2 2017 and authorized Staff to begin the CEQA  
3 process in May 2020.

4           On September 27th, the Council released a  
5 Draft Program Environmental Impact Report for  
6 public review. And today, as part of the public  
7 process, we're excited to hold a workshop to  
8 discuss the Draft Public Environmental Impact  
9 Report -- or Programmatic Environmental Impact  
10 Report. So today's workshop will include an  
11 overview from our staff of the document and an  
12 opportunity for the public to provide oral  
13 comments on the draft.

14           In addition, anyone interested in  
15 commenting on the draft can provide written  
16 comments during the public comment period which  
17 runs through November 30th, and they can do so by  
18 emailing [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov).

19           After the public comment period closes,  
20 Staff anticipates reviewing and responding to  
21 comments and developing and presenting the final  
22 PEIR in mid-2022.

23           With that, I'd like to introduce Jeff  
24 Henderson, Deputy Executive Officer for Planning  
25 and Performance, to walk us through the workshop.

1           MR. HENDERSON: All right. Thank you,  
2 Jessica.

3           Can everybody hear me okay?

4           CHAIR TATAYON: Yes.

5           MR. HENDERSON: Okay. Thank you.

6           And could we please have the PowerPoint  
7 presentation?

8           So thank you, Jessica. It's my pleasure,  
9 on behalf of the staff who prepared the Ecosystem  
10 Amendment, to guide us through today's workshop.  
11 And as you mentioned, we'll begin with the  
12 background of the amendment itself, walk through  
13 some of the key components of the Environmental  
14 Impact Report that's been prepared, and then  
15 we'll have an opportunity for some dialogue and  
16 public comment.

17          Next slide, please.

18          So again, this provides the background  
19 for our presentation today. And as it relates to  
20 the CEQA process, of the California Environmental  
21 Quality Act process, we'll talk about the  
22 organization of the Environmental Impact Report,  
23 the alternatives that we considered, which is one  
24 of the requirements for the Council under CEQA,  
25 and key conclusions of the Program Environmental

1 Impact Report, and then we'll provide next steps  
2 as we continue to proceed through the update  
3 process.

4 Next slide, please.

5 And just again, by way of background for  
6 purposes of the workshop, the Delta Plan includes  
7 a chapter related to ecosystem restoration and  
8 the Delta Plan itself. It is the Comprehensive  
9 Resource Management Plan for the Delta and the  
10 Marsh that was called for in the Delta Reform  
11 Act.

12 The original plan was adopted by the  
13 Council in 2013. And the key parts of the Delta  
14 Plan that are kind of the active parts of the  
15 Delta Plan are regulations that are applicable to  
16 what are known as covered actions, which are  
17 certain discretionary actions that occur within  
18 the Delta led by state or local public agencies  
19 that meet certain criteria established in the  
20 Reform Act. Those projects must address the  
21 regulations or comply with the regulations that  
22 are spelled out in the Delta Plan as policies.

23 There are also recommendations within the  
24 Delta Plan to other agencies to take steps to  
25 help to implement the Delta Plan's objectives and



1 the coequal goals, and the plan includes  
2 performance measures to help us track progress  
3 over time. And all three of these components,  
4 the proposed policies that would eventually  
5 become regulations, recommendations to other  
6 agencies, and performance measures to track  
7 progress, all three of those parts of components  
8 of the proposed amendment.

9           And since 2013, parts of the Delta Plan  
10 have been revised due to a variety of different  
11 change of circumstances and conditions in the  
12 Delta, including the shift from the Bay Delta  
13 Conservation Plan that Jessica mentioned in her  
14 overview which is the impetus for the Ecosystem  
15 Amendment.

16           Next slide, please.

17           So Chapter 4 of the Delta Plan is the  
18 Ecosystem chapter. And it was originally  
19 developed based, as Jessica mentioned, on the  
20 expectation that the Bay Delta Conservation Plan  
21 would be incorporated into the Delta Plan. And  
22 in 2015, agencies that were acting on the Bay  
23 Delta Conservation Plan shifted their approach  
24 from that plan to a more focused set of  
25 mitigation projects. And to address that shift

1 in planning and implementation, the Council began  
2 developing an approach to update Chapter 4 of the  
3 Delta Plan in 2016.

4           The Council, also through this process,  
5 determined that the Ecosystem Amendment was a  
6 project under the California Environmental  
7 Quality Act, or CEQA, and that a Program  
8 Environmental Impact Report, or Program EIR, was  
9 the appropriate document to prepare in order to  
10 analyze and propose mitigation for the potential  
11 impacts associated with other entities  
12 implementation the Delta Plan Amendment. And  
13 we'll talk a little more about the structure, the  
14 content, and assumptions of the EIR towards the  
15 end of the presentation today.

16           Next slide, please.

17           The Ecosystem Amendment reflects an  
18 important shift toward ecosystem-based management  
19 with particular focus on getting larger, more  
20 connected restoration projects in the right  
21 locations on the landscape as quickly as  
22 possible.

23           The proposed amendment does not involve  
24 construction or operation of any specific  
25 facilities or other specific physical actions

1 that would be taken by the Council. Rather, it  
2 provides guidance and a vision for restoration.

3           At a high level, it could help projects  
4 that contribute to multi benefits in terms of --  
5 multiple benefits in terms of flood risk  
6 reduction, continued agricultural productivity,  
7 additional habitat benefits, as well. It can  
8 contribute -- it can help to contribute to  
9 ecosystem function by restoring the food web,  
10 even if much of the land remains in agricultural  
11 production in the future. It can help projects  
12 that contribute to resiliency, to shocks and  
13 ability to adapt to climate change for the  
14 ecosystem and for flood risk.

15           And an important component of the vision  
16 does address funding and institutional  
17 coordination which requires (indiscernible) based  
18 on solid science to fund and implement projects  
19 in the future. And we would be guiding those  
20 projects through the regulations that are  
21 proposed as part of the amendment.

22           One opportunity that does exist is to  
23 stack various different funding sources, again,  
24 such as through multi-benefit projects.

25           Next slide.

1           So the need for the Ecosystem Amendment  
2 was really driven by the pivot for -- from the  
3 BDCP, changes to the environment, new science,  
4 and some understanding based on lessons learned  
5 from restoration projects regarding what has or  
6 has not worked.

7           The proposed amendment takes a more  
8 comprehensive approach and more ecosystem-based  
9 approach to achieve the goals and strategies that  
10 were defined in the Delta Reform Act. It's based  
11 on five core strategies, which are listed here on  
12 the slide, and we will walk through each of them  
13 in turn.

14           These core strategies form the basis for  
15 what then is carried forward as 6 policies and 15  
16 recommendations that address protecting,  
17 restoring, and enhancing the Delta ecosystem.  
18 Only one policy that we're proposing is entirely  
19 new and it's focused on transparency and  
20 reporting which will help us track implementation  
21 of projects over time.

22           Next slide, please.

23           So the first core strategy, Core Strategy  
24 1, is focused on using best available science to  
25 manage flows that support the needs of native

1 species throughout their life cycle. It seeks to  
2 create more natural, functional flows by  
3 requiring covered actions to be consistent with  
4 the State Water Resources Control Board's Bay  
5 Delta Water Quality Control Plan Flow Objectives,  
6 and that -- there's no change to that particular  
7 policy.

8           This core strategy also seeks to work  
9 with state -- work with the State Water Resources  
10 Control Board to ensure best available science  
11 informs its regulatory decisions regarding stream  
12 flows and water quality.

13           Core Strategy 1 includes one existing  
14 regulatory policy and proposed revisions to one  
15 recommendation addressing the points that I just  
16 outlined.

17           Next slide, please.

18           Core Strategy 2 complements the first  
19 core strategy as more natural flows are most  
20 effective when they're flowing across a restored  
21 landscape. Core Strategy 2 identifies five  
22 priority attributes for projects to restore  
23 ecosystem function. Projects -- those priority  
24 attributes are to restore hydrological,  
25 geomorphic, and biological processes, to be large

1 scale, to improve connectivity, to increase  
2 native vegetation cover, and to benefit at-risk  
3 natural communities or species.

4           This core strategy also discusses the  
5 importance of design and restoration projects  
6 with consideration for their surrounding land use  
7 context.

8           So taken together, these attributes and  
9 compatibility with surrounding uses are important  
10 considerations with regard to prioritizing  
11 restoration projects on the landscape.

12           Next slide.

13           So Core Strategy 2 seeks to restore  
14 ecosystem function by requiring covered actions  
15 to consider and disclose how they would improve  
16 ecosystem function and provide social benefits  
17 using those criteria that we just summarized on  
18 the previous slide, and by requiring  
19 consideration of expanded floodplains and  
20 creation of riparian habitat and levee projects.

21           Core Strategy 2 also seeks to recommend  
22 increased public funding, good neighbor  
23 strategies that coordinate restoration with  
24 adjacent uses, and exemptions for Delta levees  
25 from the U.S. Army Corps of Engineers' policy

1 that otherwise prohibits vegetation on levees.

2 Next slide.

3 Core Strategy 3 is focused on addressing  
4 the challenges proposed by land subsidence and  
5 sea level rise. This strategy is organized  
6 around two objectives.

7 First, it seeks to protect the existing  
8 but limited opportunities that exist for tidal  
9 marsh restoration. And the graphic that's shown  
10 here is from the narrative and it shows types of  
11 conservation activities that would be appropriate  
12 at different elevations within the Delta. Tidal  
13 marsh restoration is shown in the intertidal  
14 restoration band as an illustration of the  
15 concept of having the right project in the right  
16 place on the landscape.

17 This strategy is also focused on halting  
18 and reversing subsidence with consideration for  
19 sea level rise. And three new recommendations  
20 are proposed to support this objective.

21 Next slide, please.

22 So Core Strategy 3 seeks to protect land  
23 for restoration and safeguard against land loss  
24 by requiring habitats to be restored at  
25 appropriate elevations for current and future

1 conditions, and by protecting land with the best  
2 habitat restoration opportunities from  
3 incompatible uses.

4 Core Strategy 3 also seeks to recommend  
5 enhanced working landscapes, developing or  
6 updating management plans for public lands to  
7 halt or reverse land subsidence, and recommending  
8 funding to reverse land subsidence.

9 Next slide, please.

10 As we know, nonnative invasive species  
11 harm native species in the Delta in a variety of  
12 ways. Core Strategy 4 is focused on enhancing and  
13 -- enhancement and management actions that would  
14 support native species and reduce the impacts of  
15 nonnative species. It seeks to protect native  
16 species and reduce those impacts by requiring  
17 covered actions to avoid introducing or expanding  
18 habitat supporting nonnative invasive species.  
19 This is what we refer to as Policy ER P5, and  
20 there is no change proposed to that policy within  
21 the amendment.

22 But Core Strategy 4 also recommends  
23 actions to control nonnative invasive species,  
24 including predatory fish, improving fish  
25 migration within the Delta and the upper



1 watersheds, funding projects that help juvenile  
2 salmon avoid gradation and being trapped by water  
3 intakes on the south Delta, managing hatcheries  
4 to reduce genetic risks and improve the  
5 resilience of native species, and coordinating  
6 remote fish tracking programs.

7           Next slide, please.

8           And the fifth and final core strategy  
9 seeks to improve institutional coordination to  
10 support implementation of the amendment by  
11 recommending support for the implementation of  
12 ecosystem restoration programs and projects by  
13 aligning state restoration plans and conservation  
14 strategies with the Delta Plan.

15           This core strategy identifies the  
16 existing Delta Plan Interagency Implementation  
17 Committee, or DPIIC, as a forum for federal and  
18 state agencies that have some responsibility for  
19 restoration in the Delta to help coordinate  
20 funding, land ownership and management,  
21 permitting, and science.

22           Next slide, please.

23           So the Council released a preliminary  
24 draft of the Ecosystem Amendment for public  
25 review and comment in 2019 following this period

1 of 2016 to '18 where we set the foundation,  
2 approach, and prepared science synthesis papers  
3 to help support the development of the policies  
4 and recommendations.

5           Based on public comments received,  
6 Council Staff further revised a November 2019  
7 preliminary draft, resulting in a May 2020 draft.  
8 That May 2020 draft incorporates extensive  
9 feedback from the Council, from Delta  
10 stakeholders, from the Delta Independent Science  
11 Board, from independent scientific peer  
12 reviewers, and from the public. And that May  
13 2020 draft then forms the basis of the project  
14 description for our Draft Program Environmental  
15 Impact Report which was issued in September 27 --  
16 on September 27th of 2021.

17           Next slide, please.

18           So this slide outlines our CEQA process  
19 moving -- we're now kind of moving from the  
20 amendment into the CEQA process.

21           In 2020, in May, we released a Notice of  
22 Preparation and a draft version of Chapter 4, as  
23 was mentioned on the previous slide, initiating a  
24 60-day response to comment period. we did  
25 receive numerous responses to that Notice of

1 Preparation that are outlined and addressed in  
2 the Draft Program Environmental Impact Report.

3 Purpose Draft Program Environmental  
4 Impact Report was released on September 27th of  
5 2021. And we're now in the midst of a comment  
6 period that originated on that date and will end  
7 on November 30th.

8 Once we receive the written public  
9 comments, we will be preparing a Response to  
10 Comments and revisions to the Program  
11 Environmental Impact Report that will be  
12 contained in a Final Environmental Impact Report  
13 that will be issued in Spring of 2022. And if  
14 the Council ultimately approves of the Ecosystem  
15 Amendment and certifies that Final Environmental  
16 Impact Report, we would initiate the rulemaking  
17 process for the new and revised proposed  
18 regulations at that time in 2022.

19 Next slide.

20 So I wanted to just take a moment and  
21 review a range of the types of comments that we  
22 received on the Notice of Preparation for this  
23 Environmental Impact Report. We got comments  
24 regarding the description of the proposed project  
25 to be evaluated, a number of concerns or

1 suggestions regarding the core strategies and  
2 sort of the components of the project itself.

3           We got comments regarding the range of  
4 alternatives that we would be evaluating in the  
5 Environmental Impact Report. That is one of our  
6 requirements under CEQA, is to consider a  
7 reasonable range of alternatives to the project.

8           We received comments regarding the  
9 definition of environmental and regulatory  
10 settings throughout the document, technical and  
11 resource-specific considerations across the  
12 different environmental impact areas, suggestions  
13 regarding projects to be included in the  
14 Cumulative Impacts Analysis, and comments  
15 regarding consistency of the document and  
16 compliance with existing laws and plans,  
17 including, specifically, the Public Trust  
18 Doctrine.

19           And Staff has proposed a number of  
20 changes to a number of non-substantive changes to  
21 the environmental -- or I'm sorry, to the  
22 proposed amendment to address a number of these  
23 comments. And they're also addressed throughout  
24 the Program Environmental Impact Report.

25           Next slide, please.

1                   So the Environmental Impact Report  
2 addresses what we're referring to as the primary  
3 planning area, which is shown in purple on the  
4 map on the screen, which consists of the Delta  
5 and the Suisan Marsh, as well as the extended  
6 planning area, which is shown in green and beige,  
7 and comprised of the Delta watershed and areas  
8 outside the watershed that use Delta water. This  
9 is important because for each impact assessment  
10 in the document the Program EIR analyzes effects  
11 within both the primary planning area and the  
12 extended planning area with greater detail and  
13 precision within the primary area. This is the  
14 same approach as was taken for the 2013 Delta  
15 Plan and the 2018 Delta Plan Amendments and the  
16 environmental documents prepared for those  
17 efforts.

18                   Next slide, please.

19                   So a bit of background on Program EIRs.  
20 These are types of EIRs that are allowed under  
21 CEQA to evaluate plans and programs that are  
22 comprised of multiple actions or components. The  
23 actions or components must be related  
24 geographically by applying rules and regulations  
25 or as logical parts of a long-term plan. These

1 are different than what are typically known as  
2 Project EIRs in that individual projects are not  
3 analyzed.

4           A Program EIR can be thought of as an  
5 advance planning document which provides  
6 disclosure about potential impacts to the  
7 environment, it can inform the public and  
8 decisionmakers about potential impacts, it  
9 identifies ways to avoid or reduce potential  
10 impacts, improves public awareness and  
11 transparency, and provides a high-level  
12 assessment of policy decisions prior to  
13 consideration of individual projects.

14           This particular Program EIR assesses the  
15 potential effects of different types of projects  
16 and activities that could be undertaken by other  
17 entities in response to the proposed Ecosystem  
18 Amendment.

19           Next slide, please.

20           So the PEIR, or Program EIR, evaluates  
21 the potential impacts of various types of  
22 projects that the proposed amendment in the Delta  
23 Plan would encourage and promote throughout the  
24 primary and extended planning areas. And this  
25 ultimately is because the Council is not in a

1 position of implementing the Ecosystem Amendment  
2 through sponsoring individual projects. The  
3 types of projects that would be coming forth  
4 following the Ecosystem Amendment would be  
5 implemented, largely, by other actors, other  
6 entities that are driving these projects.

7           The EIR considers the types of general  
8 activities, the types of potential projects, and  
9 various conservation methods that could result  
10 from implementing the Ecosystem Amendment.  
11 Again, it doesn't involve construction or  
12 operation of facilities, all regulatory policies  
13 applying to covered actions of the state or local  
14 agencies.

15           And for example, this would include the  
16 following types of general activities.

17           Within the primary planning area,  
18 improved function and connectivity of floodplain  
19 habitats, restoring, protecting, or enhancing  
20 wetlands, streams, riparian habitats, and upslope  
21 watershed sites, subsidence reversal activities,  
22 and potentially removal of nonnative terrestrial  
23 and aquatic invasive species and revegetation of  
24 sites with native plants. That would be with  
25 that primary planning area for the Delta and

1 Suisan Marsh.

2           Within the larger watershed planning  
3 area, the types of projects include potential  
4 fish passage improvement projects, hatchery  
5 management projects. And it is important to note  
6 that some projects in the primary planning area  
7 could also affect the extended planning area, for  
8 example, through projects that would potentially  
9 change flows.

10           Next slide.

11           So CEQA defines a range of topics that  
12 must be addressed in an EIR. And this Program  
13 EIR addresses all of them. The impacts and  
14 mitigation measures are summarized in the  
15 Executive Summary to the EIR, which is Table ES-  
16 4. And the details associated with the potential  
17 impacts and proposed mitigation measures across  
18 all of these topics are identified in Chapter 5  
19 of the Program Environmental Impact Report, with  
20 a separate section for each topic listed. And  
21 those sections comprise existing settings, so the  
22 existing environmental setting, the existing  
23 regulatory setting, potential impacts, and  
24 proposed mitigation measures.

25           And again, the proposed Ecosystem



1 Amendment does not involve construction or  
2 operation of specific facilities of other  
3 specific physical actions by the Council.

4 Next slide.

5 So for purposes of a conservative  
6 analysis and recognizing that the Council is not  
7 the prime actor with regard to implementing the  
8 Program Environmental -- or implementing the  
9 Ecosystem Amendment, the EIR concludes that there  
10 are significant and unavoidable impacts  
11 identified for all but two impact areas. And  
12 again, this is a conservative approach that  
13 recognizes uncertainty, that recognizes that the  
14 actions to be implemented would be by entities other  
15 than the Council, and that, ultimately, these  
16 significant unavoidable impacts will require a  
17 Statement of Overriding Consideration when the  
18 Council certifies its final Program Environmental  
19 Impact Report. And those less-than-significant  
20 impacts, the two issue areas with less than  
21 significant impacts, are energy resources and  
22 population and housing.

23 Next slide.

24 An EIR also typically proposes mitigation  
25 measures that are means to reduce the potential

1 impacts associated with the proposed project and  
2 the kind of steps that projects can take or  
3 components that could be implemented to help  
4 reduce those. Many of the mitigation measures  
5 that are in the Ecosystem Amendment remain  
6 unchanged from those that were part of the 2013  
7 Delta Plan, although there was an effort made to  
8 clarify language, remove some duplicative  
9 coverage, reflect updating formatting and current  
10 standards where we could.

11 For non-covered actions implemented in  
12 response to the Ecosystem Amendment, these  
13 mitigation measures are recommended as opposed to  
14 required.

15 It's important to note that the Delta  
16 Plan's Policy GP 1(b)(2) requires covered actions  
17 to incorporate mitigation -- incorporate either  
18 the mitigation measures that are proposed or  
19 adopted as part of the Delta Plan EIR or  
20 equivalent mitigation that is equally or more  
21 effective. And that's a component that enters  
22 our covered actions review process through Policy  
23 GP 1(b)(2).

24 And new mitigation measures have been  
25 added to this particular effort for designing

1 projects to minimize agricultural land zone  
2 impacts, to minimizing loss of special status  
3 plant species, and several submeasures are  
4 related to avoidance or minimization of impacts  
5 to special status species. We've also included a  
6 new measure related to siting and impacts for  
7 recreational facilities.

8           The mitigation measures have also been,  
9 updated to reference newer best practices,  
10 particularly in the areas such as emissions --  
11 air pollution, emissions reductions, or  
12 greenhouse gas emissions reductions, buffer  
13 marking on construction sites, and esthetic and  
14 visual resource best practices.

15           Next slide, please.

16           So the Environmental Impact Report also  
17 addresses a range of alternatives to the proposed  
18 project which is, again, a requirement of CEQA.  
19 And we analyzed the proposed project, as well as  
20 four alternatives, the no-project alternative  
21 which consists of existing conditions at the time  
22 of the Notice of Preparation and what we would  
23 reasonably expect to occur without the Ecosystem  
24 Amendment, and then three alternatives, one, two,  
25 and three, one being protected -- maximizing

1 protection of agricultural land by reducing the  
2 impact of ecosystem restoration projects on  
3 agricultural working land in the Delta.

4 A second alternative, reduce waterside  
5 restoration which would not promote channel  
6 widening and levee setback projects.

7 And a third alternative to reduce the  
8 overall restoration footprint by reducing the  
9 target restoration acreage as expressed in the  
10 performance measures that are proposed as part of  
11 the project.

12 So all three of these alternatives are  
13 means to adjust the proposed policies,  
14 recommendations, or performance measures in  
15 manners that would reduce the potential impacts  
16 associated with the project.

17 And it should be noted, Alternative 3 is  
18 identified as the environmentally-superior  
19 alternative, again, a function of CEQA and a  
20 requirement to identify which of the project  
21 alternatives both reduces those impacts and could  
22 be potentially environmental superior to the  
23 project.

24 Next slide, please.

25 Similar impacts were found between the

1 proposed project and the no-project alternative,  
2 but the no-project alternative does not meet the  
3 objectives of the proposed project or the  
4 objectives of the Ecosystem Amendment. The three  
5 project alternatives all have similar impacts but  
6 impacts are reduced in some resource areas. And  
7 again, Alternative 3 is identified as the  
8 environmentally-superior project under CEQA but  
9 it only partially achieves project objectives.

10 And so it enables -- the Council is  
11 enabled to adopt or move forward with the  
12 proposed project in light of this finding through  
13 a Statement of Overriding Considerations. And so  
14 we'll get to that when we're addressing the final  
15 EIR in the spring.

16 Next slide, please.

17 So again, a review of our next steps.  
18 The Draft EIR was released in September. The  
19 public comment period runs through November the  
20 30th. That nature of the comments on the Draft  
21 Program Environmental Impact Report are not yet  
22 known. If there are requirements to  
23 significantly change the approach, this would be  
24 a burden to the Council, and the current approach  
25 assumes a response to comments in that revisions

1 would be complete and a Final EIR issued in  
2 February or March of 2022.

3 And at that point, again, if the Council  
4 approves the proposed amendment and certifies the  
5 Final Environmental Impact Report, we would  
6 initiate the rulemaking process.

7 Next slide, please.

8 So that concludes the presentation. And  
9 happy to entertain any Councilmember questions.  
10 And we look very much forward to public comment.

11 COUNCILMEMBER MEHRANIAN: I have a  
12 question.

13 CHAIR TATAYON: Yes, Maria?

14 COUNCILMEMBER MEHRANIAN: This is Maria.

15 My question is that we developed the  
16 three alternatives, and the three alternatives,  
17 two questions. One is: Are they subject to,  
18 still, adjustments and modifications at the time  
19 hat we start the work? Number one. And number  
20 two: Are they subject to approval by any other  
21 entity?

22 MR. HENDERSON: The alternatives?

23 COUNCILMEMBER MEHRANIAN: Um-hmm. The  
24 three alternatives.

25 MR. HENDERSON: The three alternatives

1 are, essentially, proposed in the EIR to help  
2 describe the difference in impacts between the  
3 project and those alternatives that are proposed.

4 COUNCILMEMBER MEHRANIAN: Um-hmm.

5 MR. HENDERSON: They are not necessarily  
6 actionable alternatives in the sense that the  
7 Council would proceed with the proposed project  
8 informed by the steps that could be taken within  
9 the alternatives. But, ultimately, we're  
10 pursuing the project objectives --

11 COUNCILMEMBER MEHRANIAN: Um-hmm.

12 MR. HENDERSON: -- for the work.

13 COUNCILMEMBER MEHRANIAN: So the  
14 alternatives were -- so when we implement the  
15 project, these alternatives are the ones that  
16 were not picked?

17 MR. HENDERSON: Correct.

18 COUNCILMEMBER MEHRANIAN: Okay. That's  
19 what I wanted to know. Okay.

20 MR. HENDERSON: Yeah. But that is a --

21 COUNCILMEMBER MEHRANIAN: Could any --

22 MR. HENDERSON: -- that is a --

23 COUNCILMEMBER MEHRANIAN: -- any entity  
24 say -- you know, I'm trying to see the process of  
25 the CEQA process and all that. Could they be

1 brought back in at any point for discussion by  
2 any other entity, or even modification of our  
3 proposed or chosen alternative?

4 MR. HENDERSON: The Council could  
5 certainly consider components of the alternatives  
6 as part of the proposed project but --

7 COUNCILMEMBER MEHRANIAN: But not the  
8 other stakeholders?

9 MR. HENDERSON: Well, other stakeholders  
10 can and likely will provide comments on those  
11 alternatives that the Council can take under  
12 consideration with regard to its action on the  
13 proposed project.

14 COUNCILMEMBER MEHRANIAN: Thank you.

15 MR. HENDERSON: Yeah.

16 CHAIR TATAYON: Any other questions for  
17 Jeff?

18 Don?

19 COUNCILMEMBER NOTTOLI: Yeah, just  
20 briefly. I may be piggybacking on Maria's  
21 question, Jeff.

22 So you said that the alternatives would  
23 inform the project. But once there is a  
24 certification to the environmental document, then  
25 the project has been defined, the -- you know, as



1 you've outlined the various implementation  
2 aspects have been incorporated into the chapter  
3 for the ecosystem restoration. So I guess I'm  
4 curious, when you say inform, so you would carry  
5 over elements into the project and that would be  
6 incorporated, or you have the proposed project,  
7 as you've outlined?

8           So, how do these alternatives, I guess, in  
9 the backdrop, either as we go forward to consider  
10 this in moving forward to the spring, but also, I  
11 guess, after that, I mean, are they just finally  
12 set aside?

13           MR. HENDERSON: I'll offer a preliminary  
14 response but I might also ask Kathy McEfee, who  
15 is joining us today, to help with some of those  
16 responses, as well.

17           But the, again, the alternatives are  
18 proposed in the EIR to help compare what the  
19 Council is proposing in the proposed project with  
20 different steps that the Council could take  
21 within the project that would reduce impacts.  
22 Those steps, to varying degrees, do reduce those  
23 impacts but are less -- are less effective  
24 relative to the project's original objectives  
25 than the proposed project.

1           So in terms of what the alternatives help  
2 to inform, they help to inform, ultimately, the  
3 Council's decision regarding the proposed project  
4 in light of the potential reductions of impacts  
5 in the other alternatives. But it's not  
6 necessarily a polling of a component of the  
7 alternative and placement in the project.

8           It's more the Council looked at a range  
9 of different alternatives when it chose to  
10 approve the proposed project -- when it chooses  
11 to approve the proposed project and considered  
12 those relative impacts and those reductions and,  
13 ultimately, within findings that the Council will  
14 prepare at the time of final action, ultimately  
15 determined that benefits of the proposed project  
16 outweigh the reductions afforded by the  
17 alternatives.

18           COUNCILMEMBER NOTTOLI: Jeff, just let me  
19 ask you on that point then, so for example, you  
20 could use any one of the alternatives here but  
21 the first one was ag land protection, obviously,  
22 reduce waterside restoration and restoration  
23 footprint -- or reduce restoration footprint, so  
24 I'll just pick the first one.

25           So if we -- if ultimately the project is

1 approved, then the alternative that was offered  
2 in Alt 1, the ag land protection, we're choosing  
3 the project over that alternative. But what  
4 about then, again, to come back to the point  
5 where you said that the informing about how, you  
6 know, the working landscape for agriculture is  
7 impacted by restoration and/or elements are  
8 incorporated so that, you know, fish-friendly  
9 farming, you know, wildlife-friendly farming, a  
10 lot of different, you know, acronyms, I guess,  
11 that folks use for descriptions.

12           So I'm just trying to understand as we go  
13 forward, the alternatives would lessen, I guess,  
14 the project -- or affect the project goals but  
15 would lessen the impacts. And are we taking  
16 steps, though, in any one of those three there  
17 that would incorporate elements of those that  
18 would still allow the project to go forward but  
19 have stronger approaches to mitigation than  
20 otherwise would be if we didn't consider those  
21 alternatives? I don't know if that's clear.

22           MR. HENDERSON: I think in the case of  
23 the ag land --

24           COUNCILMEMBER NOTTOLI: Yeah.

25           MR. HENDERSON: -- preservation. And

1 there are components of both the project and the  
2 alternative. So for example, the good neighbor  
3 checklist idea -- or not idea, the recommendation  
4 for the good neighbor checklist --

5 COUNCILMEMBER NOTTOLI: Um-hmm.

6 MR. HENDERSON: -- that's a part of the  
7 project, it's part of the project and part of the  
8 alternatives.

9 COUNCILMEMBER NOTTOLI: Okay.

10 MR. HENDERSON: So I mean, the types of  
11 things that we would be doing in the alternative  
12 would be just, for example, reducing the amount  
13 of -- just kind of straight reducing the amount  
14 of restoration that occurs on the landscape in  
15 the interest of preserving --

16 COUNCILMEMBER NOTTOLI: Um-hmm.

17 MR. HENDERSON: -- maximizing  
18 preservation of agricultural land.

19 So it attempts to address that tradeoff  
20 and address it through the various different  
21 means that are proposed in the amendment.

22 COUNCILMEMBER NOTTOLI: Okay. That  
23 helps. Again, it's clearer to me now. And you  
24 are recommending the good neighbor checklist but,  
25 you know, we want this checklist, obviously, to

1 incorporate some of those aspects of --

2 MR. HENDERSON: Incorporating those  
3 principles, yeah.

4 COUNCILMEMBER NOTTOLI: The principles,  
5 right. Okay. All right. Thanks.

6 Thanks, Madam Chair. That's all I  
7 needed. Thanks.

8 CHAIR TATAYON: Certainly. Thank you,  
9 Don.

10 Any other questions for Jeff?

11 I have a question, Jeff, on the priority  
12 attributes. Could you put that in the context of  
13 the CEQA and the proposed project versus the  
14 alternatives?

15 MR. HENDERSON: There would be no  
16 difference between the project and the  
17 alternatives with regard to --

18 CHAIR TATAYON: Okay.

19 MR. HENDERSON: -- the inclusion of what  
20 we're referring to as ER PA, which incorporates  
21 those five components.

22 The way alternatives work is they're  
23 perhaps, more -- you know, we do talk about  
24 changes, potentially, to some of the  
25 recommendations and policies that would result in

1 reduced acreage of restoration or in, across the  
2 board, reduced construction impacts, for example,  
3 because there are fewer potential restoration  
4 projects under those alternatives.

5 CHAIR TATAYON: Um-hmm.

6 MR. HENDERSON: But the ER PA policy  
7 would be part of the proposed project  
8 (indiscernible) all of the alternatives. So --

9 CHAIR TATAYON: I see.

10 MR. HENDERSON: -- it wouldn't be  
11 directly impacted.

12 CHAIR TATAYON: Okay. Thank you.

13 Well, seeing no other Councilmember  
14 questions, is there any public comment on this  
15 item?

16 MS. BARGER: There is, Madam Chair. We  
17 have Brett Baker.

18 Brett, you should be able to un-mute  
19 yourself.

20 MR. BAKER: Good morning, Councilmembers.  
21 I just have a few comments here on behalf of the  
22 Central Delta Water Agency. We will be  
23 submitting additional written comments by the  
24 deadline on the 30th next week, the week after  
25 Thanksgiving.

PMT-1

1           So I just wanted to start out by saying  
2 that we're not opponents to the idea of habitat  
3 and restoration in general. We just want to see  
4 that these conflicts with current local land  
5 uses, soil protection, and water supply are  
6 minimized or not exacerbated to the extent that  
7 this habitat -- the habitat restoration takes  
8 place.

9           So along those lines, our main areas of  
10 concern are that there is no increased salinity  
11 intrusion as a result of these efforts. That  
12 would include any changes to the Delta's  
13 hydrology or tidal prism, no increase in  
14 methylation of mercury. We don't want to do  
15 anything to inhibit or increase hab formations.  
16 And likewise, we also want to reduce conflicts  
17 with flood control, like I stated earlier.

18           There is some things regarding  
19 hatcheries, both salmonids and smelt. I believe,  
20 I'm a firm believer, there's a lot of room for  
21 improvement in the way we hatchery-rear fish in  
22 this estuary for salmonids, anadromous fish.

23           As far as smelt go, we do have concerns  
24 as to placing hatchery-reared smelt in the Delta.  
25 I think it is very important that we are

PMT-1  
cont.

PMT-2

1 cognizant of the location and timing of those  
2 releases to minimize any regulatory impacts such  
3 as, you know, the operation of a state and  
4 Central Valley project.

↑  
PMT-2  
cont.

5           So in addition, you know, there are -- we  
6 are supportive of the idea of restoring Franks  
7 Tracts. I believe there's a right way and a  
8 wrong way to do it, or an effective way to do it,  
9 and then there's probably a costly, less  
10 effective way to do it. I would encourage the  
11 Council to engage the local folks to come up with  
12 solutions that make sense there.

↑  
PMT-3

13           Lastly, performance measures, I don't --  
14 I'm not a firm believer that just putting acreage  
15 targets out there is really a performance measure  
16 in and of itself.

↑  
PMT-4

17           And, yeah, ultimately, our last question  
18 is we have submitted comments on Lookout Slough.  
19 And our main concern with any habitat restoration  
20 is it is properly funded and paid for by those  
21 who are responsible for the payment of it. We  
22 don't want to see any Delta levee money being  
23 taken or stolen to build habitat that doesn't  
24 help protect flood risk, reduce flood risk.

↑  
PMT-5

25           Thank you.



1 CHAIR TATAYON: Thank you, Mr. Baker.

2 Any other public comments on this item?

3 MS. BARGER: There are, Madam Chair. I  
4 also have Osha Meserve.

5 Osha, you should be able to un-mute  
6 yourself.

7 MS. MESERVE: Thank you. Good morning.  
8 Osha Meserve with Local Agencies of the North  
9 Delta. Can you hear me all right?

10 MS. BARGER: Yes.

11 MS. MESERVE: Okay. So, yeah, we're  
12 still in the process of reviewing the revised  
13 Chapter 4, as well as the Program EIR. I was,  
14 you know, I was really looking, I guess, to see  
15 if some of the key comments that I had made on  
16 the 2020 draft -- or I guess it's actually 2019  
17 draft were implemented. I'm a little concerned  
18 that some of them have not been addressed still,  
19 and I'll bring those up in a comment letter.

20 I think just to touch on a few issues,  
21 you know, this Figure 4-2 in the chapter, it  
22 really is showing a restored future landscape  
23 that, for most parts of the Delta, is not  
24 attainable. And you know, when we're looking at  
25 areas that are in agricultural use, surrounded by

PMT-6

PMT-7

1 levees, this idea of connecting the land to the  
2 water is not feasible and is in direct conflict  
3 with protecting the Delta, you know, the  
4 communities and the culture of the Delta.

5           So you know, I think that additional  
6 explanation around that in terms of limiting it  
7 to places where that would be actually possible  
8 without disrupting the existing communities would  
9 be really important and respectful of all the  
10 effort that's gone into the agricultural  
11 operations over, you know, the more than like 150  
12 years or more.

13           There's also, I think, an issue where  
14 there's not a connection back to the delist  
15 (phonetic) policy and how that works together.  
16 And I know delist is still under development  
17 but -- or I guess it finally got adopted. So I  
18 think it would be a good time to go back and see  
19 if you could try to explain how the delist policy  
20 jibes with the restoration suggestions.

21           There's a concern, still, about Stone  
22 Lake's National Wildlife Refuge being a priority  
23 restoration area. That's a national wildlife  
24 refuge designated by congress. I don't think  
25 it's respectful to say that the DSC is suggesting

PMT-7  
cont.

PMT-8

PMT-9

1 something different than what the refuge manager  
2 is trying to carry out there under the Refuge  
3 Management Plan. And I'm sure that the refuge  
4 manager could consult with your staff on the  
5 particulars of that. I think I tried to tee up  
6 that issue for you in comments before and I  
7 couldn't see that that was addressed.

↑  
PMT-9  
cont.

8 We do appreciate the inclusion of the  
9 updated good neighbor checklist. I'm very happy  
10 to see that, at least as a suggestion.

↑  
PMT-10

11 May I just briefly conclude, Chair  
12 Tatayon?

13 CHAIR TATAYON: Yes. Go ahead, Osha.  
14 Thank you.

15 MS. MESERVE: I can see my time is up but  
16 I don't think there's that many people in line,  
17 so let's see.

18 I think there's another issue that is  
19 kind of addressed in the good neighbor checklist  
20 to a certain extent, but I think it's important  
21 for the Council's materials to address it, is  
22 that there's ongoing maintenance needed for  
23 restoration projects. It's not a set it and  
24 forget it. And we see some restoration projects  
25 proposed by DWR, or the contractors or outside

↑  
PMT-11  
↓

1 investment firms, really want to come in and just  
2 build something and then just leave, and that's a  
3 real concern for the communities.

4           And so I think for the Council to be  
5 suggesting actively that, you know, the long-term  
6 maintenance is something that needs to be  
7 addressed would be very helpful in making sure  
8 these projects are successful and that,  
9 ultimately, the Council's goals of promoting more  
10 restoration actually can be carried out.

11 Obviously, it's like weeds, trespass, you know,  
12 all kinds of access issues, you know, they can be  
13 addressed long term, but I think someone needs  
14 to, you know, point that out.

15           I think that's all I'll say for now but I  
16 do appreciate the opportunity to comment. And  
17 we'll try to get some writing in.

18           Oh, one last thing. I will be checking  
19 the EIR to look at the emissions for the  
20 conversion for restoration for carbon  
21 sequestration. I know we've got an update on  
22 that next on the agenda. That is a big concern  
23 to me that that gets taken into account because  
24 putting in tule and tulle (phonetic) and other  
25 types of cover, that has a big concern with

PMT-11  
cont.

PMT-12

1 methane emissions. And we need to make sure that  
2 we're weighing all the different kinds of  
3 emissions coming off of these types of projects.  
4 Again, they could be very beneficial, it might be  
5 a good idea, but we need to make sure we're not  
6 just looking at one benefit and excluding other  
7 impacts that may occur. And that also includes  
8 taking away ag productivity. And that's where,  
9 you know, maybe things like rice are a little bit  
10 closer to something that would work in the Delta,  
11 more so than the straight up tulle.

12 So anyway, thanks.

13 CHAIR TATAYON: Okay. Thanks. Thank  
14 you, Osha.

15 COUNCILMEMBER MADUENO: Chair Tatayon?

16 CHAIR TATAYON: Virginia, yes?

17 COUNCILMEMBER MADUENO: Thank you.

18 CHAIR TATAYON: Um-hmm.

19 COUNCILMEMBER MADUENO: Just a quick  
20 question.

21 Jessica or Ryan [sic], just if you could  
22 give us a quick recap in terms of the next steps  
23 and the follow up? I'm really interested in  
24 seeing -- and there were a couple of speakers who  
25 just mentioned that they're going to be

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cont.

1 submitting some additional comments in a letter.  
2 When does all of this get wrapped into a public  
3 document? And what's the, I guess, the timeline  
4 for us to also be able to review these additional  
5 comments and feedback that we can consider with  
6 this new alternative that's being proposed?

7 MR. HENDERSON: I can respond to that if  
8 you'd like?

9 CHAIR TATAYON: Yes. Go ahead. thank  
10 you, Jeff.

11 MR. HENDERSON: Firstly, I just want to  
12 clarify, there's not a new alternative being  
13 proposed. We were talking about a range of  
14 alternatives that were defined in the EIR as a  
15 comparison to the project. So the proposed  
16 project remains as described in the presentation  
17 in the Ecosystem Amendment and in the EIR itself.

18 What we're doing from here is, on  
19 November 30th, so the Tuesday following  
20 Thanksgiving, November 30th the public comment  
21 period for the Draft Environmental Impact Report  
22 closes. So a number of the speakers, for  
23 example, were referring to preparing written  
24 comments. They're doing that in response to that  
25 process, which we're anticipating those comments

1 being submitted by the 30th.

2 Staff will then take in the comments,  
3 itemize them, categorize them, prepare responses  
4 to each comment received. And those responses  
5 will be incorporated into a Final Environmental  
6 Impact Report. And then what will happen is we  
7 will bring the responses to comments, the Final  
8 Environmental Impact Report, and the Ecosystem  
9 Amendment itself to the Council in Spring of 2022  
10 to for further review and discussion, at which  
11 point we would be asking the Council to --  
12 essentially, at that point, that's when Staff  
13 would be recommending certification of the Final  
14 EIR and adoption of the plan.

15 So those comments, again, will be coming  
16 in by the 30th. We will be itemizing and  
17 responding to them December, January, February.  
18 As we get into March and April of next year,  
19 we'll be looking at a time frame for a Council  
20 action to consider and move -- and potentially  
21 approve the EIR and the Ecosystem Amendment.

22 COUNCILMEMBER MADUENO: Thank you, Ryan,  
23 that -- for that clarification and timeline. I  
24 appreciate that.

25 CHAIR TATAYON: Okay. If there are no

1 other public comments, I think we can consider  
2 that this item is concluded.

3 MS. BARGER: Madam Chair, I saw Matt  
4 Holmes had his hand up but seems to have lowered  
5 it. I just wanted to make sure that that was  
6 a -- oh, Matt Conover.

7 CHAIR TATAYON: Okay.

8 MS. BARGER: -- and Matt Holmes. Okay,  
9 now they're both raised. Okay. We'll start with  
10 Matt Holmes.

11 MR. HOLMES: Yeah. Sorry. I clicked the  
12 raise hand button. I wasn't sure. I'm here to  
13 comment on the carbon capture item but I wasn't  
14 sure what item we're on right now, because I  
15 was --

16 CHAIR TATAYON: Oh, hi. Hi Matt. Yeah,  
17 we are not on carbon capture just yet.

18 MR. HOLMES: Thanks. I was in a Valley  
19 Air Governing Board meeting at the same time, so  
20 I'm in two --

21 CHAIR TATAYON: No.

22 MR. HOLMES: -- different spots.

23 CHAIR TATAYON: That's quite all right.

24 MS. BARGER: I'll put you in the queue  
25 for the next item.



1           Matt Conover, you should be able to un-  
2   mute yourself.

3           MR. CONOVER:   Hi.   This is Matt Conover.

4           CHAIR TATAYON:   Good morning.

5           MR. CONOVER:   Good morning.   I'm in  
6   Cosumnes River floodplain across (indiscernible)  
7   the McCormack-Williamson Tract off Twin Cities  
8   Road, west of I-5 about a mile-and-a-half in the  
9   spot where the Cosumnes River dumps into the  
10   Delta at the northeast corner of the Delta.   I've  
11   presented to you at other meetings, as well as to  
12   other agencies, and haven't seen much  
13   responsiveness.   I've called Staff, including  
14   Jeff Henderson and the lady who runs Delta  
15   Adapts, and repeated the same thing over and over  
16   and haven't seen any changes.

17           I haven't yet read this.   And I'm hoping  
18   that when I do it will have something that  
19   acknowledges, at a lower policy level, the  
20   economic impacts created by these policy changes.  
21   One might be the Delta Adapts Policy Impact  
22   Analysis made, in general, about letting lower-  
23   lying islands overtop the levees at sea level  
24   rises, but there's no discussion of whether those  
25   farmers can make a living and stay feasible with

PMT-13

1 a recommendation of just to shifting their crop  
2 mix to salt-tolerant species. There needs to be  
3 some economic impact analysis, socioeconomics of  
4 population displacement, and modeling of the  
5 impacts of this, getting it down off this high-  
6 policy level to real human impacts.

7 Human dimensions was mentioned earlier by  
8 the Science Board and should look at the impacts  
9 of flooding, breaking (indiscernible) Slough  
10 levee and flooding everything up through RDD 1002  
11 (phonetic), parallel to I-5, and the Morrison  
12 (phonetic) impacts, and the backup flooding  
13 caused by Nature Conservancy's projects up and  
14 down the Cosumnes River, and using us as the  
15 floodplain basin. And it's affecting Point  
16 Pleasant. It closed I-5 for months in a flood  
17 several years ago.

18 And that's my main comment and I'll write  
19 it up if you'd like.

20 Thank you very much.

21 CHAIR TATAYON: Yes. Thank you. Thank  
22 you very much, Mr. Conover. We would appreciate,  
23 if you have the time, to receive your comments in  
24 writing.

25 So one last check for public comments on

PMT-13  
cont.

1 this item?

2 MS. BARGER: I believe that concludes the  
3 public comment at this time.

4 CHAIR TATAYON: All right. Thank you,  
5 Beck.

6 Well, in that case, thank you very much,  
7 Jeff, for a great overview.

8 (Whereupon Item 8 concluded at 10:59 a.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2021.

  
MARTHA L. NELSON, CERT\*\*367

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony  
in the foregoing hearing was taken at the time  
and place therein stated; that the testimony of said  
witnesses were transcribed by me, a certified transcriber and a  
disinterested person, and was under my  
supervision thereafter transcribed into  
typewriting.

And I further certify that I am not  
of counsel or attorney for either or any of  
the parties to said hearing nor in any way  
interested in the outcome of the cause named  
in said caption.

I certify that the foregoing is a  
correct transcript, to the best of my  
ability, from the electronic sound recording  
of the proceedings in the above-entitled  
matter.



MARTHA L. NELSON, CERT\*\*367

December 10., 2021

## ***Public Meeting Transcript***

### **Responses to Comments from Draft PEIR Public Meeting**

#### **PMT-1:**

See responses to letter LO1.

#### **PMT-2:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. It is noted and will be forwarded to the Council for their consideration.

See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

#### **PMT-3:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. It is noted and will be forwarded to the Council for their consideration.

See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment. See response LO1-4 for discussion of how through DLIS, the Council is updating priorities for State investments in the Delta levee system.

#### **PMT-4:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

#### **PMT-5:**

This comment does not address the adequacy or content of the Draft PEIR.

#### **PMT-6:**

See responses to Letter LO4.

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

#### **PMT-7:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment. See also response LO4-3 for discussion of Figure 4-2.

**PMT-8:**

This comment addresses the proposed amendment and not the adequacy or content of the Draft PEIR. The DLIS is not part of the proposed Ecosystem Amendment but is a separate portion of the Delta Plan. See Topical Response 1: Development and Purpose of the Proposed Ecosystem Amendment for information about the extensive process undertaken to develop the proposed Ecosystem Amendment.

See response LO4-5 for a discussion of The Council's ongoing efforts on the DLIS.

**PMT-9:**

See response LO4-8 for discussion of how the Council coordinated development of the Ecosystem Amendment through an interagency committee composed of federal and State agencies, including USFWS, and local partners.

**PMT-10:**

This comment is noted and will be forwarded to the Council for consideration.

**PMT-11:**

See response LO4-9 for how the impact analysis for each of the resource sections in Chapter 5, *Environmental Setting, Impacts, and Mitigation Measures*, evaluates the potential impacts of operational and maintenance activities for projects implemented by other entities in response to the proposed Ecosystem Amendment. See also response ST4-4 for discussion of New Delta Plan Recommendation ER R "B" recommends the use of the Good Neighbor Checklist.

**PMT-12:**

See response LO4-13 for a discussion of consideration of GHG emissions from carbon sequestration projects in the Draft PEIR.

**PMT-13:**

See response LO8-3 for a discussion of how CEQA addresses socioeconomic effects of a project, and the analysis of farmland conversion associated with the implementation of restoration projects.

In addition, Draft PEIR Section 5.11, *Hydrology and Water Quality*, Impact 5.11-4 evaluates whether the implementation of projects in response to the proposed Ecosystem Amendment could impede or redirect flood flows (see pages 5.11-148 through 5.11-152). Within the Primary Planning Area, it was found that implementation of projects by other entities in response to the proposed Ecosystem Amendment could redirect flood flows and/or affect the system's ability to handle flood flows. Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such projects are proposed. Because there could be the potential for adverse changes to flood risk associated with the construction and operation of future projects in the Primary Planning Area in response to the proposed Ecosystem Amendment, this impact would be potentially significant.





**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

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