



### **Delta Counties Coalition**

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

July 10, 2020

**SENT VIA EMAIL:** [ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov)

Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
Attn: Harriet Ross, Assistant Planning Director

### **Re: Comments on Notice of Preparation of Program Environmental Impact Report (PEIR) for the proposed Delta Plan Ecosystem Amendment**

Dear Council:

Thank you for the opportunity to comment on the Notice of Preparation ("NOP") for a Program Environmental Impact Report ("PEIR") for the proposed Delta Plan Ecosystem Amendment (Proposed Project), and the Draft Amendments to Chapter 4: Protect, Restore and Enhance the Delta Ecosystem. This letter is submitted on behalf of the Delta Counties Coalition ("DCC"), which is composed of elected members from Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties. DCC members request to be kept informed of project developments and remind the Delta Stewardship Council ("DSC") of the counties' roles as responsible agencies for projects that may be covered actions subject to the Chapter 4 Amendments.

### **Project Description and Relationship to Other Regulatory Actions Must be Clear**

In addition to containing a clear project description, the Draft PEIR must also describe actions by other agencies to carry out the project, including "[a] list of related environmental review and consultation requirements [found in] federal, state, or local laws, regulations, or policies. To the fullest extent possible, DSC must integrate review under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000, et seq.) with these related environmental review and consultation requirements." (CEQA Guidelines, § 15124, subd. (d)(1)(C); see also CEQA Guidelines, § 15006, subd. (i).) An EIR must also consider related regulatory regimes when considering project alternatives. (See Guidelines, § 151126.6, subd. (f)(1).) Identifying competing regulatory authorities of other agencies and disclosing how those authorities may impact a project is essential information for an EIR. (See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (*Banning Ranch*); see Pub. Resources Code, § 21003, subd. (a).) DSC must also "make a good faith attempt to analyze project alternatives and mitigation measures in light of applicable [regulatory] requirements" and may not "leav[e] it to other responsible agencies to address related concerns seriatim." (*Banning Ranch*, *supra*, 6 Cal.5th at 941.)

The interrelationship of authority between DSC and other regulatory entities for covered actions potentially subject to consistency review with the proposed revisions to Chapter 4 of the Delta Plan must be described. To the extent there are conflicts between the Chapter 4 Amendments and other regulatory processes, that must be described and analyzed. In particular, the relationship of the habitat considerations in the Chapter 4 Amendments to other processes that apply to the provision of flood control in the Delta, must be disclosed. If the Chapter 4 Amendments would hinder the provision of flood control in the Delta, those environmental impacts must be disclosed.

### **Potential Water Quality Impacts Associated with Restoration Proposed in the Chapter 4 Amendments Must be Analyzed**

The Chapter 4 Amendments state that “Achieving the Delta Reform Act vision for the Delta ecosystem requires the reestablishment of tens of thousands of acres of functional, diverse, and interconnected habitat.” The Program EIR must fully analyze the environmental impacts associated with large scale restoration. In addition to being compatible with local land uses, such restoration projects must avoid negative water quality impacts. In particular, restoration can affect salinity and increase methyl mercury. Increasing the tidal range in the Delta can increase salinity and thereby decrease agricultural productivity. In addition, methylmercury is a potent bioaccumulator and a bioconcentrator in people and wildlife. To the extent the Chapter 4 Amendments would lead to these types of water quality impacts, they must be disclosed, analyzed and properly mitigated. It should not be assumed that restoration has only benefits and causes no impacts.

### **Compatible Restoration with Good Neighbor Policies**

Over the years, there have been very expansive plans for restoration of the Delta, much of which has been mapped on private lands with no consultation with landowners and no commitment to willing sellers. These projects are often required by state and federal water project Endangered Species Act permit requirements, and there is a great amount of pressure to minimize costs.

In the past, these projects have been designed without regard to offsite impacts on neighboring landowners and islands and include no local benefits. The DSC recommended amendment to include the use of Good Neighbor Checklist to coordinate restoration with adjacent land uses is appreciated. The referenced DWR Good Neighbor checklist, however, does not fully encompass all aspects needed to assure that restoration projects are consistent with neighboring land uses and not cause long-term negative economic, social, and environmental impacts. DCC requests that the DSC work with DCC and other stakeholders to develop comprehensive Good Neighbor Checklist that restoration project proponents must consider at the outset of project planning. In addition, DSC should encourage restoration projects to include local benefits in the initial design in order to create greater community support (e.g., addition of recreational facilities where possible).

### **Expansion of Floodplains and Riparian Habitats for Levee Projects**

DCC remains concerned that the ER P4 requirements to investigate expansion of floodplains and increase connectivity for levee projects along the miles of the Sacramento River and other waterways shown in Appendix 8A is wasteful and inappropriate. The overarching goal of connecting the river and channels to floodplains should not apply in locations where existing communities rely on the levees providing continued flood protection.

The habitat restoration promoted in the Chapter 4 Amendments would have significant impacts on the Delta levee systems. Maintain the capacity and functionality of flood control systems surrounding and protecting the neighboring land uses is necessary for the protection of life and property. Mandating the expansion of floodplains as part of levee projects can cause hydraulic effects to neighboring levees and have system wide operational effects (e.g., removal of primary levees may increase potential flooding impacts to secondary interior levees not designed for added wave fetch and tidal pressures).

The cumulative hydraulic changes in the Delta and associated impacts on the remaining levee system must also be evaluated. Further, expansion of floodplains and commensurate reductions in productive agriculture can hinder economic feasibility of long-term operation and maintenance of the levee system. In addition, adjacent land use needs must be considered before applying policies that would remove all or a portion of the original levee prism in order expand water-side habitat.

To extent that flood policies would hinder provision of flood protection, the Draft PEIR must analyze those increased flood risks. It would be preferable for the DSC to adjust the proposed policies and maps so that they do not interfere with implementation of necessary flood protection measures in the Delta.

#### **Protect Land for Restoration and Safeguard Against Land Loss**

Current efforts to promote participation in the carbon markets in the Delta have focused on limited scientific data regarding alleged carbon dioxide emissions of Delta farms. While addressing climate change is an important priority, it is critical that Delta farmers not be disparaged in the process of seeking out solutions. The DSC should focus on publicly owned lands initially then willing landowners and should promote other viable programs to reduce carbon emission besides conversion of viable agricultural land into tidal habitat including; Healthy Soils Program, beneficial reuse of dredge material, and other similar programs. These and similar programs maintain the viability of land uses and simultaneously reverses the impacts to subsidence, carbon emissions, and climate change.

#### **Conclusion**

The DCC and its staff are available to discuss and work with DSC on implementing our recommendations and requests. Please feel free to contact DCC Coordinator Natasha Drane at 916-874-4627 or [DraneN@SacCounty.net](mailto:DraneN@SacCounty.net).