

**DELTA PROTECTION COMMISSION**

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October 15, 2020

SENT VIA EMAIL - Michael.S.Jewell@usace.army.mil

Michael Jewell, Chief Regulatory Division  
 U.S. Army Corps of Engineers, Sacramento District  
 1325 J Street  
 Sacramento, CA 95814

**RE: Delta Protection Commission Request for Cooperating Agency Status, Delta Conveyance Project**

Dear Mr. Jewell:

The Delta Protection Commission (Commission) is a California state agency created by the Delta Protection Act of 1992, which declared the Delta “a natural resource of statewide, national, and international significance, containing irreplaceable resources, and that 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” (Public Resources Code § 29701). The Act directed the Commission to regulate land use in the Delta to ensure that the populous metropolitan areas surrounding the Delta did not overrun this natural resource and forever alter the irreplaceable agricultural, recreational, natural and cultural features that make the Delta the unique place that it is.

The Delta Reform Act directs the Commission to recommend ways to protect and enhance the Delta’s unique values to the Delta Stewardship Council. The Delta Protection Act outlines a process for the Commission to review and provide comments and recommendations to the Council on any significant project or proposed project within the scope of the Delta Plan that may affect the unique values of the Delta (Public Resources Code § 29773(a)).

Furthermore, federal law designates the Commission as the local coordinating entity for the newly-authorized Sacramento-San Joaquin Delta National Heritage Area (NHA), and charges it with preparing and submitting to the Secretary of the Interior an NHA management plan. That plan is underway and is due to the Secretary of the Interior by March 2022.

**The Commission requests that the United States Army Corps of Engineers (Corps) establish the Commission as a cooperating agency for the Delta Conveyance Project (DCP).**

Title 40 C.F.R. § 1501.8(a) provides “Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. An agency may request the lead agency to designate it a cooperating agency.”

A cooperating agency is defined by Council on Environmental Quality (CEQ) regulations as “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment”. The selection and responsibilities of a cooperating agency are also described in §1501.6. “A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.” (40 C.F.R. § 1508.5.) Further, CEQ regulations define special expertise as “statutory responsibility, agency mission, or related program experience.” (40 C.F.R. § 1508.26.)

#### The Commission has Special Expertise with Respect to Environmental Impacts Involved in the Delta Conveyance Project (DCP)

The Commission has special expertise with respect to environmental impacts involved in the DCP because of its agency mission and related program experience. As indicated above, the Commission has statutory responsibility for advising the Delta Stewardship Council (and the Delta Plan) on protecting and enhancing Delta cultural, recreational, natural resource, and agricultural values. These values are referred to collectively as “Delta as Place”.

The Delta Reform Act 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” (Public Resources Code § 29703.5(a)). In addition, Public Resources Code § 29702 finds that the goals of California for the Delta are to “provid[e] a more reliable water supply for California and [to] protect, restore, and enhance the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”

The DCP will affect the cultural, recreational, natural resource, and agricultural resources of the Delta. In particular, the project’s impacts on “temperature, in-Delta and through-Delta flows, and outflows to the Bay” will impact “agriculture, municipal water suppliers that rely on Delta water, Delta industrial uses, such as food processors and petrochemical plants, Delta sport fisheries, and recreation, including the spread of aquatic invasive species and harmful algal blooms.” (Exhibit 1). Therefore, the Commission’s qualifications as a cooperating agency are established by its statutory responsibility to protect evolving Delta resources that are impacted by the DCP.

In addition, the Commission has special expertise with respect to the environmental impacts of the DCP deriving from our statutory responsibilities as the local coordinating entity for the Sacramento-San

Joaquin Delta NHA. (Pub. L. 116-9, March 12, 2019, 133 Stat. 583.)<sup>1</sup> The Commission “shall be the local coordinating entity for the National Heritage Area...consisting of land in Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties in the State...” (Ibid.) As the local coordinating entity, the Commission is charged with “prepar[ing] and submit[ting] a management plan for the National Heritage Area” which includes “incorporating an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the National Heritage Area.” (Ibid.)

The law further provides that “[t]he head of any Federal agency planning to conduct activities that may have an impact on a National Heritage Area designated by subsection (a) is encouraged to consult and coordinate the activities with the Secretary and the local coordinating entity to the maximum extent practicable.”<sup>2</sup>

The DCP will impact all Delta communities, including those within the new NHA. Proposed launch shafts, tunnel material handling, and maintenance and retrieval shafts will convert farmland and disrupt marinas and recreational boating. Economic and cultural impacts of required project mitigations from agricultural lands being converted to restoration projects are a major concern, as are water quality impacts on Delta agricultural and municipal uses. Since the Commission has the statutory responsibility to create an approach to “protect and enhance Delta resources,” the Commission has special expertise with respect to the environmental impacts resulting from the DCP.

In summary, the Commission has special expertise with respect to environmental impacts because of its agency mission and because of its responsibilities as the NHA local coordinating entity, and we respectfully request that the Corps confer cooperating agency status to the Delta Protection Commission for the Delta Conveyance Project. Thank you for your consideration.

Sincerely,

Erik Vink

Executive Director

cc: Zachary Simmons - Zachary.M.Simmons@usace.army.mil  
Chair Oscar Villegas and members, Delta Protection Commission

Exhibit 1: Delta Protection Commission comment letter on DCP Notice of Preparation

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<sup>1</sup> Available at: <https://www.congress.gov/116/plaws/publ9/PLAW-116publ9.pdf>

<sup>2</sup> Ibid., § 6001 (d) (2)