

DRAFT

March 17, 2022

Vice Chair Virginia Madueno and members
Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814

Sent via email to: lookoutsloughproject@deltacouncil.ca.gov

Re: Lookout Slough Tidal Habitat Restoration and Flood Improvement Project – Delta Plan Appeal (C202110)

Dear Vice Chair Madueno and Councilmembers:

The Delta Protection Commission (Commission), in its role representing Delta communities and advising the Delta Stewardship Council (Council) on protecting and enhancing the unique Delta values, offers these comments about the resubmitted certification of Delta Plan consistency for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Lookout Slough, or proposed project). Commission staff will be presenting to the Council at the hearing on March 24.

As the state agency charged with representing the Delta region, the Commission works to protect, maintain, enhance, and enrich the overall quality of the Delta environment and economy. We do this with a focus on agriculture, recreation, heritage, and natural resources, while remaining mindful of the importance of the Delta to all Californians.

The Delta Reform Act of 2009 articulated the state’s basic goals for the Delta: 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” (Public Resources Code section 29702(a) and Water Code section 85054).

The Commission has a further critical role set forth in Public Resources Code section 29773:

- (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following: (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta. (2) Recommendations for actions that

may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta. (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan. (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.

- (b) The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.

The Commission commented on the Lookout Slough project during the prior appeal of its certification of consistency, and Commission staff participated in a conversation with the Department of Water Resources (DWR) after the Council's action on the prior appeal. We present here our recommendation to the Council pursuant to Public Resources Code section 29773, based on review and consideration of the project.

While the Commission supports efforts to restore the Delta ecosystem, we object when those efforts needlessly damage core values of the Delta as a place – in this case recreation – or create other conflicts with existing uses, such as the farms north of Liberty Island Road. A principal Delta Plan policy furthering the Delta Reform Act goal of protecting values of the Delta as a place is DP P2—Respect Local Land Use. Under it, ecosystem restoration and flood control projects may not conflict with other local land uses simply because avoiding or reducing those effects is inconvenient, but rather only when mitigation is infeasible. The Council incorporated DP P2 in the Delta Plan to carry out recommendations submitted by the Commission to protect these Delta as place values (Water Code section 85301).

DWR's project undermines Delta recreational values, reducing opportunity for angling, hunting, and wildlife observation at the site and at LIER. By providing no public parking to support its boat ramp or replace parking lost to the project, it will increase conflicts with private farmlands adjoining the project north of Liberty Island Road. Allowing public use of the project's boat ramp without dedicated parking and contemporary boat ramp design is inadequate mitigation for these impacts. For these reasons, the project conflicts with DP P2.

DWR's assertions that it is incapable of better avoiding or mitigating these impacts is unconvincing. It is a powerful, capable, and well-funded agency and can do better. Our staff's detailed comments are attached.

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Although the Commission believes that the project is inconsistent with the Delta Plan, we still believe that DWR can correct this inconsistency by applying its considerable capabilities to avoid or mitigate its adverse effects on recreation and adjoining land uses, rather than the token effort proposed in its current certification. While we were disappointed that DWR did not adequately address Liberty Island Access' valid concerns and our recommendations, they can do so at any time – and, we believe, without sacrificing the primary objectives of their project. What is needed is a more thoughtful and determined effort to bring project stakeholders together to resolve these conflicts, rather than brush them aside.

Resolving the appeal in a way that addresses the legitimate concerns raised can demonstrate California's commitment to the promise of the Delta Reform Act and the Delta Plan -- that ecosystem restoration and water supply reliability will be achieved in a manner that protects and enhances unique Delta values, especially recreation, agriculture, and cultural values. To do otherwise would undermine the commitment to protect these values that is at the core of the Delta Reform Act and Delta Plan.

This letter was discussed at the Commission's March 17, 2022 meeting and was approved by a XX-XX vote.

Sincerely,

cc: Members, Delta Protection Commission

Delta Protection Commission - Detailed Comments

Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (C202110) – Appeal of Certification of Consistency

Lookout Slough Project conflicts with local land use (DP P2)

- *Conflicts with adjacent private farmland.* By not providing public parking to support use of the project’s publicly accessible boat ramp as well as use of the remaining bank fishing area along the Shag Slough levee, the project invites recreationists to park in areas north of the Lookout Slough project site and in the turn-around that DWR will create at the end of Liberty Island Road.

DWR’s project provides no public parking to support these recreationists’ use of its publicly accessible ramp. Instead, paddlers using the ramp will apparently be expected to line up as they approach the new turn-around at Liberty Island Road’s eastern terminus, offload and carry their craft approximately 500 feet to launch at the publicly accessible boat ramp, secure their boat and gear, and then return to their vehicles to find parking back along the shoulder of Liberty Island Road for their vehicle and perhaps a trailer used to carry their canoe or kayak. With vehicles already travelling to the west, ramp users’ vehicles are most likely to park along the road’s north side, adjacent to the private farmland there. DWR’s Charlotte Biggs anticipates that some of these visitors may use the turnaround as a parking area (Attachment 3A, page 13). DWR also anticipates recreationists parking vehicles along Liberty Island Road (Attachment 1, page 11). If the boat ramp is to support the current level of use, 20 or more recreationists could seek to park here daily.

As Solano County staff points out, recreationists parking in the turn-around that DWR expects will serve its public boat ramp are likely to conflict with trucks and trailers for neighbors, such as Reclamation District 2068, that want to access their pumps and adjacent farmers with their cattle trailers (Misty Kaltreider, Attachment 3A, page 13). Others may contribute to the traffic, littering, and partying that EIP’s Dave Urban reports Shag Slough neighbors are already upset about (Attachment 3A, page 8). Solano County staff warns that these problems are unlikely to go away and could worsen after the project is built, as people will continue to find a way to recreate in the area, upsetting neighbors (James Bezak, Attachment 3A, page 13). This could include transferring to this stretch of Liberty Island Road west of the turn-around the types of problems noted by the County Sheriff’s reports, including 29 warnings and 4 citations issued over 10 years, as well as 34 times when services were rendered, once to an angler who died while fishing (PRA Solano County Sheriff’s Office Crime Reports.pdf)¹. Calls for service could also increase if the lack of parking causes

¹ Of potential crimes reported in the Sheriff’s reports, the most serious seems to be a marijuana grow east of Prospect Slough, which would appear to be on state land on the east side of Liberty Island Ecological Reserve, rather than any area at issue in this appeal.

overcrowding, accidents, and cars in ditches, as Solano County staff warns (Matthew Tuggle, Attachment 3A, page 14).

These unmitigated impacts with agricultural land use north of the project are inconsistent with Delta Plan policy DP P2 (Respect Local Land Use).

- *Conflicts with recreation.* The project conflicts with recreational land use at Liberty Island Ecological Reserve (LIER) and Shag Slough, in contravention to the Delta Plan’s policy DP P2 (Respect Local Land Use). DWR’s certification concedes to these conflicts (p. 9).

As Liberty Island Access (LIA) points out, these conflicts include loss of the only pedestrian access to LIER, whose almost 6.95 square miles are used for nature study, angling, and hunting. Bank fishing will also be lost to 1.3 miles of Shag Slough shoreline along Liberty Island Road, an almost 90 percent reduction. The project will also block access to an informal area used to launch kayaks and canoes into Shag Slough. As DWR’s certification points out, the recreation value of even the small area remaining accessible for bank fishing is likely to become less attractive due to crowding as anglers lose most of their existing waterline access.

Paddle boating, nature study, angling, and hunting are among the most popular outdoor recreation activities in the Delta. According to California State Parks’ *Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh* (p. 8-10), 18 percent of regional residents go paddle boating, 40 percent enjoy birdwatching and wildlife watching, 34 percent participate in outdoor photography, up to a third fish, and up to 6 percent hunt annually. Areas used for parking that supports these uses will also be lost. The project conflicts with these uses by disrupting boat launching and dramatically reducing the area accessible for nature study, fishing, and hunting,

Recreational use at the site is considerable. As LIA points out, about 21,500 recreation visits annually occur here, based on the survey of recreationists that DWR has finally completed and LIA’s own estimates of visitors per vehicle. About a third are fishing for food, emphasizing the area’s importance to lower income families. Although DWR’s survey did not ask the origins of visitors, information filed with LIA’s prior appeal shows they come from throughout Solano County and beyond, likely drawing a cross section of the county’s diverse population (Solano County Economic Development Corporation). Many are first time users, and thus likely to return.

Demand for recreation at the site will likely increase with the county’s growing population, projected to increase by 20 percent over the next 40 years (California Department of Finance). Solano County’s Christopher Drake concurs, noting that recreation may grow, especially as DWR’s restoration project draws more attention to the area (Attachment 3A, page 13). Recreation use may also increase if more striped bass are drawn up Shag Slough

as water flows through the Yolo Bypass more regularly with completion of Fremont Weir modifications to provide more regular inundation.

DWR's certification acknowledges its project will conflict with recreation at LIER and along Shag Slough (Attachment 1, Section 3.1. page 9). Liberty Island Access' answers to the Council staff's questions describe these conflicts thoroughly (2022-02-28 lia answers to council staff questions, page 1).

GP (b)(2) applies. We agree with Liberty Island Access that the certification must address application of GP(b)(2) and the related Delta Plan mitigation measures for recreation. The measures apply because they mitigate the cumulative effects of implementing the Delta Plan in addition to specific effects of individual actions that implement the plan. DWR's new recreation data show its EIR erred in concluding its recreation impacts were insignificant. Its responsibilities under the Delta Plan to avoid or reduce damage to recreation use should not be decreased by its error.

Mitigation of these conflicts is still inadequate. DWR's proposal to allow public use of the project's boat ramp does not adequately mitigate its impacts to adjoining land use. From the Commission's review, it appears the only measure to mitigate conflicts with adjoining farmlands is for neighbors to call the Sheriff or the game wardens that DWR is funding. DWR's only measure to mitigate conflicts with recreation is to allow public use of its boat ramp. As Liberty Island Access thoroughly describes, this mitigation is inadequate because it does not reduce or compensate for lost bank fishing and nature study opportunities, and also because of lack of dedicated public parking at the ramp and failure to reflect current design standards for public boat ramps (2022-02-28 lia answers to council staff questions, pgs. 2-4).

A mitigation suggested by the Commission is misdescribed and only partly analyzed in DWR's current certification. Commission staff suggested that DWR retain the 1.3 miles of Liberty Island Road levee along Shag Slough but lower it from the Liberty Island Road bridge north to the proposed turn-around. This would allow the lowered levee to act as a weir passing floodwaters from the slough to the project site. Restoration of a historic slough channel extending from below the Liberty Island Road bridge and continuing toward the northeast area of the project site could introduce tidal influence into the site's northeast corner, rather than breaching the Shag Slough levee north of the bridge (Exhibit 3A, page 10). This slough is clearly visible in satellite photos of the site (see Google Earth screenshot of Lookout Slough project site.pdf in the record's folder LIA documents). The slough's natural origin is revealed by its meandering channel and branching, dendritic character, despite the belief of EIP's Dave Urban that it was dug by a prior owner (Attachment 3A, p. 10). DWR did not describe this alternative to DFW in its discussion of stakeholder suggestions, but rather presented only screenshots of a suggestion from Liberty Island Access (Attachment 3A, p. 27). DWR also used a channel network that does not incorporate restoration of this historic tidal creek to model the potential effect on tidal

influence of this potential mitigation measure (Attachment 3C, pgs. 2-4 and 9). No evidence in the record indicates DWR considered our recommendation, contrary to the provisions of DP P2. If the Liberty Island Road bridge is to be removed, as DWR suggests is likely, this alternative may be even more feasible, with the remnant levee remaining as a low weir that provides access for bank fishing and nature study along Shag Slough.

DFW and Solano County staff suggested additional mitigations in their discussions with DWR. As described in Liberty Island Access' answers to the Council's questions, these include modifying the boat ramp to provide adequate public parking, other features of current boat ramps, a fishing pier for anglers, trails for nature study, or funding to improve offsite areas suitable for these uses (2022-02-28 lia answers to council staff questions, pgs. 2-3). No evidence in the record indicates DWR considered Solano County staff's recommendations, contrary to the provisions of DP P2.

We agree with Liberty Island Access that because DWR did not consider or properly evaluate these mitigation measures, its record lacks substantial evidence that it has adequately avoided or reduced the project's adverse effects on adjoining farmland and recreation uses as required by Delta Plan policy DP P2.

DWR's record doesn't demonstrate that better mitigation is infeasible. Policy DP P2 requires that ecosystem restoration or flood management projects must be sited to avoid or reduce impacts to existing or planned uses when feasible. The Delta Plan defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

We agree with Liberty Island Access that DWR's record does not provide substantial evidence that it has tried to avoid or reduce the projects adverse effects, considering our comments and those of Solano County's staff, rather than that avoiding or reducing those effects is infeasible.

Substantial evidence refers to evidence that a reasonable person could accept as adequate to support a conclusion. Substantial evidence is more than a scintilla of evidence. It is not a conclusion or assumption unsupported by facts and reasoning. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate are not substantial evidence.

As described below, Commission staff believes a reasonable person reviewing the certification could not conclude that DWR is incapable of avoiding or mitigating the project's effects as the Commission and Solano County's staff recommended. We believe a reasonable person would consider the record supporting DWR's current certification in context with DWR's assertions in prior hearings on this project. As DWR now concedes, it erroneously stated in its prior certification that the best available science supported its inaccurate estimate of recreation use based on an estimation method that its independent experts concluded was inappropriate to estimate recreation at a site (Attachment 2, pgs. 11-12). DWR's EIR concluded impacts on

recreation were insignificant, contrary to the admission in the current certification of consistency that its project will conflict with these uses (Attachment 1, p. 9). DWR asserted that its previous certification made clear that its agency boat ramp was available for public use, contrary to the Council's own findings that the record's evidence demonstrated the ramp would be closed to public use (p. 108 of Final Determination C20215 Lookout Slough.pdf). DWR also asserted that the Duck Slough setback levee would be open for public use which it now concedes was untrue (Attachment 1, page 12). In reviewing DWR's current certification, a reasonable person would be mindful of these inaccuracies in DWR's prior statements about recreation at the site.

In considering whether DWR is incapable of excavating a historic tidal channel, building a boat ramp with public parking and other features of a contemporary public launch ramp, or installing a fishing dock or a trail for birdwatching and nature study, a reasonable person would consider the agency's extraordinary capabilities. DWR designed, constructed, and operates the State Water Project, which includes myriad recreation facilities including fishing areas, boat ramps, day use, and camping areas. It both directly restores tidal habitats and provides funds to others to restore degraded creeks and rivers. Its FY 2021-22 budget for the State Water Project is \$1.7 billion and its 3300 employees include many water engineers, environmental scientists, and lawyers (see DWR_budget.pdf in folder LIA documents). Each year, it negotiates and complies with complex interagency agreements and environmental regulatory documents, including recent Temporary Urgency Change Petitions to Delta water quality control standards, permits to install barriers blocking Delta waterways, and complex regulatory actions for levees, habitat projects, and other activities. No evidence in DWR's record indicates these significant capabilities are unequal to successfully completing the measures that Commission and Solano County staff have suggested to avoid or lessen its project's conflicts with recreation. For example, there is no evidence in the record of the cost of any of the measures proposed by the Commission, Solano County's staff, DFW, or Liberty Island Access. Instead, a reasonable person reviewing the record would conclude there is little that DWR cannot accomplish when it sets its mind to it.

Finally, as detailed below, the certification lacks substantial evidence supporting the individual excuses DWR proffers to argue that it is incapable of maintaining a lowered Shag Slough levee, excavating a historic tidal channel, building a boat ramp with public parking and other features of a contemporary public launch ramp, or installing a fishing dock or a trail for birdwatching and nature study.

- Modifying the boat ramp to provide adequate public parking, other features of current boat ramps, a fishing pier for anglers, trails for nature study, or funding to improve offsite areas suitable for these uses, During DWR's stakeholder meetings, both DFW and Solano County staff recommended that DWR provide adequate public parking and other features of contemporary boat ramps, a fishing pier for anglers, trails for nature study, or funding to improve offsite areas suitable for these uses, as described above and in Attachment 3 (Attachment 3, Section 5, p. 10; 2022-02-28 lia answers to council staff questions, pgs. 2-3).

Contrary to DWR’s assertion (in Attachment 3, Section 5) that suggestions by Solano County’s staff and DFW are evaluated in Attachment 4, they are not. The evaluation in Attachment 4 of the adequacy of allowing public use of DWR’s agency boat ramp makes no mention of providing adequate public parking, universal access features, or other enhancements to the boat ramp recommended by County staff and DFW (Attachment 4, Section 2.1.2). Rather, Attachment 4 describes the limited parking opportunities that may remain along the shoulder of Liberty Island Road. Nor does Attachment 4 evaluate a fishing pier, where trails for nature study might be acceptable, or funding to improve offsite areas suitable for these uses. Rather, to avoid changes in its proposed project, DWR ignores these practical suggestions from agencies experienced in providing Delta outdoor recreation.

- Maintaining pedestrian access to a lowered Shag Slough levee. The record makes clear that DFW’s opposition to allowing pedestrian levee access focuses on the Duck Slough Setback Levee on the project’s western margin and 706 other acres of the project site to be managed for giant garter snake habitat, which in total covers only 22 per cent of the project site (Gina Van Klompenburg, Attachment 3A, pages 1 and 4; p. 2 of Incidental Take Permit pdf), rather than the entire site. However, DWR fails to offer any evidence that pedestrian access to other levees at the site poses significant risks to giant garter snakes. The record includes information about DFW and federal wildlife refuges within the giant garter snake’s range that provide many examples of footpaths, including boardwalks constructed within and adjoining wetlands that may harbor giant garter snakes (Garter_snake_range; ColusaNWR Visitor area 2014 leaflet; SacNWR Visitor area 2014 leaflet; SacNWR Wildlife ViewingandPhoto; Sutter Wildlife ViewingandPhoto; YoloBypassWA WildlifeViewingMap; YBWMA_Waterfowl_Map_November). In these areas, experienced wildlife managers provide interpretation, including signage, other guidance, and stewardship when needed to prevent visitors from straying off trail where they could damage sensitive marshes or giant garter snake habitat. A reasonable person reviewing the many examples of footpaths and boardwalks located in habitat areas within giant garter snake habitats managed by state and federal wildlife agencies could only conclude that they could also be included at Lookout Slough if properly sited and managed, had DWR only considered how to do so.

Nor is there evidence that maintaining public access on 1.3 miles of a lowered Shag Slough levee north of the Liberty Island Road bridge would create legal conflicts with levee maintenance regulations. DWR has provided no evidence of any vandalism, fire rings, or steps carved in the levee at the project site, despite its many years of use for bank fishing. For example, the levee inspection posted on-line by the local reclamation district does not record vandalism impairing this levee (RD 2098_SP_2013_levee inspections). Only erosion on the waterside slope is mentioned in the levee inspection at the project site (summarized in 2012 12_08 D Presavento in the record’s Attachment 3 folder). In contrast, it is levees in other reclamation districts that are called out for repair due to foot traffic. None of the levees where foot traffic requires repair are levees managed for public use, suggesting that

providing properly managed public access is more effective at reducing levee maintenance requirements than attempting to prohibit it all together.

Nor would the U.S. Army Corps of Engineers regulations prevent public use of these levees as part of the project's mitigation for recreation impacts, as it would be a permitted use rather than trespass. Instead, the record includes several examples of permitted public pedestrian access on state and federal flood control project levees, including at the Colusa Riverfront Trail and DFW's Sutter Bypass Wildlife Area (Colusa_Riverfront_Trail; Sutter_Bypass_WA August 2016). Another well-known example of recreational use atop project levees is the Sacramento River levee that extends through Sacramento's Pocket neighborhood. Public agencies responsible for levee maintenance permit pedestrian access atop levees in all these areas. DWR provides no evidence to support its claim that recreationists walking atop flood control levees have significantly delayed or impacted their maintenance at the project site, but rather makes a claim unsupported by evidence. Reasonable site management, such as closing levees during floods as is done at the nearby Yolo Bypass (when recreationists are unlikely to be present in any case), can eliminate any risk that bank fishermen would be stranded by high water or interfere with levee patrols. No reasonable person would accept DWR's unsupported claims about these imagined hazards of people walking on the levees along Shag Slough north of the Liberty Island Road bridge.

- Lowering the Shag Slough levee to eliminate the four northernmost breaches of the Liberty Island Road. No evidence in the record supports DWR's claim that the project will be economically infeasible if these breaches are eliminated to maintain pedestrian access along the Shag Slough levee for bank fishing and nature study, especially if the nearby historic tidal creek is restored as we recommended. Rather, DWR's modeling shows that changes in tidal influence in this alternative, even without excavating the historic tidal creek, would reduce the creditable acreage of tidal marsh by only 5 acres of a 3,000+ acre project (Attachment 3C, p. 12). No reasonable person would conclude DWR would abandon the project over such a small decrease in its creditable acreage, especially considering that in consultation with its contractors it can fund this project without budget approval from the Legislature. Nor would a lowered levee, as we recommended, entail the large maintenance costs DWR asserts, as maintenance could be reduced in acknowledgement that the degraded levee was no longer part of the state and federal flood control project. No reclamation district would be required to maintain the lowered levee, because it would be part of the project site that DWR is acquiring and has agreed to maintain in perpetuity under the FRPA Implementation Strategy (Implementation_Strategy_Final_for, pgs. 11 and 34).

Nor does DWR present evidence of adverse social impacts from an alternative that lowers Liberty Island Road to maintain pedestrian access along 1.3 miles of the Shag Slough levee. This alternative would still reduce the elevation of flood waters by five inches at the site's northeast corner (.41 feet), only 1-inch less than the half foot under its project as proposed

(Attachment 1, p. 20). For example, DWR has presented no evidence about the effects of this change on flood storage in the Yolo Bypass, nor how those changes may affect the risk of levee failure and/or the recurrence of flooding along the Bypass. DWR has stated that lowering but retaining the levee as Commission staff recommend meets the project's flood goals (Attachment 3A, p. 28).

Maintaining but lowering the levee would still protect significant bank fishing opportunity, even if removal of the Liberty Island Road bridge is required as a condition of Solano County's approval of the road's abandonment (Attachment 3, Section 5.2.3, pgs. 18-19). Removal of the bridge would eliminate all possibility of pedestrian access to LIER, however, highlighting the need to mitigate for lost nature study, fishing, and hunting opportunities there. Liberty Island Road bridge removal is not described in DWR's certification of consistency or its environmental impact report (Lookout Slough Tidal Marsh Restoration and Flood Control Project draft EIR pgs. III-22 to III-50; final EIR p. 2-13-14). Because of this omission, an amendment or supplement to its EIR, including time for its preparation and review pursuant to Sections 15162-3 of the CEQA guidelines, will be needed (see 2021 10 28_Solano County and DWR and 2021 12 06 _Solano County and DWR in Folder 3).

Revising the project to avoid or reduce damage to recreation will not unreasonably delay the project. A simple amendment of the project's EIR and permits can be completed expeditiously, rather than taking the one to three years DWR claims. As noted above, amendment of the EIR will already be needed to address removal of the Liberty Island Bridge over Shag Slough. DWR should be capable of moving quickly to address other measures the Commission, Solano County's staff, and DFW have recommended to reduce damage to recreation, given the project's priority. For even the most extensive of those changes – maintaining some or all of the Shag Slough levee north of the current bridge -- modeling of effects on flooding and tidal marsh are already complete. Other changes are minor adjustments in the magnitude of impacts already reported.

Nor should much time be lost to locating additional funding sources. Those costs of mitigation are properly DWR's, which is responsible for the costs of mitigating its State Water Project impacts in any category, not just those affecting wildlife and fish. As DWR has assured DFW, the Central Valley Flood Protection Board, and neighboring reclamation districts, DWR, in consultation with its contractors, is authorized to use SWP revenue without approval by the Legislature to pay for the State Water project's costs (see for example, Implementation_strategy_final_for, p. 11). No other source is required, nor should one be sought, because there is no reason for others to offset costs of the State Water Project's damage to public resources.

Nor is the additional time required to protect recreation in the project unreasonable. Council issue papers surveying ecosystem restoration activities report that restoration projects, from property selection to construction of habitat improvements, take from 6 to 28 years in the San Francisco Bay area, where efforts over a half-century have honed the cooperative efforts of

practitioners, interest groups, and regulatory agencies (Delta Stewardship Council. January 2014 and August 2014. *Restoring Habitat with Science and Society in Mind*). Restoration projects in the Delta have typically proceeded more slowly. In the case of Lookout Slough, the request for proposals that initiated the project occurred just 6 years ago in 2016. Even if some time is required to amend the EIR to address the bridge removal and appropriate mitigation of recreation impacts, the Lookout Slough project would be one of the fastest marsh restoration projects executed in the Bay-Delta system. It would be unreasonable to permanently eliminate the significant recreation use at the project site simply to maintain DWR's accelerated schedule.

Furthermore, any delay in the project to better mitigate recreation impacts is attributable solely to the errors and intransigence of DWR and its consultants. The Commission and DFW commented on the importance of addressing recreation in our comments on both the notice of preparation and the draft EIR. Rather than recognizing the project's significant impacts to recreation, DWR dismissed them as insignificant. Liberty Island Access contacted DWR in early 2021 to discuss ways to better protect recreation but was rebuffed. Only the Council's insistence that DWR use the best available science to understand the project's harm to recreation has led to the recognition that DWR's project may eliminate approximately 20,000 visitor days of recreation annually at the site and LIER, hardly an insubstantial impact to visitors who value fishing, hunting, and nature study there.

DWR's response to the Council's remand of the previous Delta Plan certification has not been to draw the site's recreation stakeholders together to find common ground. Rather, just a week after the Council remanded its certification for the project, DWR told the Central Valley Flood Protection Board that it had no intention of better mitigating its damage to recreation, but rather to convince the Council its action was in error (Excerpt from 7/23/2021 Central Valley Flood Protection Board meeting video). Rather than bring the Commission, Liberty Island Access, DFW, and Solano County staff together to work to address our shared concerns about public recreation at the site, it met with each separately, hindering any effort to find a common understanding among those affected. Commission staff proposed a degraded levee that could be available for bank fishing. Nor did we propose a channel that parallels the Shag Slough levee so that anglers could fish off both sides of the levee (Attachment 3A, p. 27) but rather restoring a historic tidal creek so that tidal influence would reach the site's northeast corner, providing the tidal flushing DFW seeks (Attachment 3A, p. 27). DFW's ideas of better parking, a fishing pier, or trails outside the giant garter snake reserve were never presented to us (Attachment 3A, pgs. 3-10). Solano County's insistence that the Liberty Island Road bridge over Shag Slough must be removed was not shared with DFW, Liberty Island Access, or us, despite its importance to recreation at the site and the assurances of the EIR. While we welcomed DWR's suggestion of an iterative process to resolve recreation issues (Attachment 3A, p. 10), a thorough review of DWR's stakeholder interactions reveal its one-time outreach to us and Liberty Island Access was only perfunctory, searching for excuses to avoid better mitigation of recreation impacts, rather than searching for a common solution. There were no subsequent meetings. DWR declined our

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request to extend the comment period on the draft certification of consistency, eliminating any opportunity to clarify DWR’s misunderstandings and reach agreement on recreation mitigation measures.

Any reasonable person reviewing DWR’s record would agree with Liberty Island Access that DWR has made only token efforts to find feasible ways to avoid or reduce the project’s damage to recreation. Providing adequate public parking at the project’s boat ramp, a proper ramp design for paddlecraft launching, and lowering but retaining more of the Shag Slough levee for bank fishing access is feasible and would avoid the project’s conflicts with adjacent land and recreation.
