

# Public Hearing on Proposed Rulemaking for Section 5001 (Definitions) and Section 5012 (Delta Levees Investment Strategy) (Delta Plan Policy RR P1) of Title 23 of the California Code of Regulations (Government Code § 11346.8)

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Agenda Item 11  
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DELTA STEWARDSHIP COUNCIL

# Overview

- Background and Authority
- Prior Council Actions
- Delta Levee Investment and Risk Reduction Strategy Process
- Proposed Regulatory Amendments
- Rulemaking Process
- Staff Recommendation
- Public Hearing

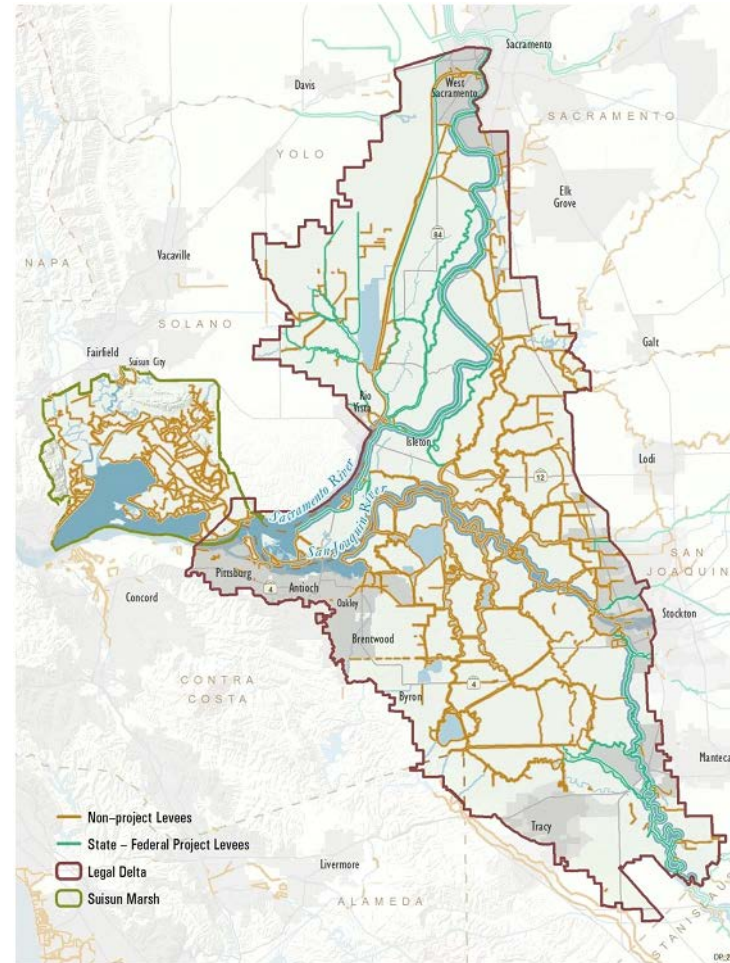
# Background

- The Delta includes more than 1,000 miles and the Suisun Marsh includes about 230 miles of levees constructed during reclamation
- Today's levee system reduces flood risk to people, property, water supply, and the Delta ecosystem
- Levee failure can cause catastrophic flooding leading to injury, loss of life, and damage to property, infrastructure, and environmental resources of importance to all Californians



# Background

- Both project levees and non-project levees are located in the Delta
- State provides financial assistance to maintain and improve Delta levees
- No comprehensive strategy to prioritize levee investments





# The Delta Plan

An enforceable, comprehensive, and long-term management plan for the Sacramento-San Joaquin Delta

- Delta Reform Act of 2009
  - Coequal Goals – Water Code section 85054
  - Delta Plan – Water Code section 85300
  - Flood Risk Reduction – Water Code section 85305(a)
  - Recommend Priorities for Delta Levee Investments – Water Code section 85306
  - Adopt Regulations – Water Code section 85210(i)
  - Request Agency Reports – Water Code section 85210(h)

# Recommend Priorities for Levee Investments

*“The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investment in levee operation, maintenance, and improvements in the Delta, including both levees that are part of the State Plan of Flood Control and nonproject levees.”*

*Water Code section 85306*

# Prior Council Actions

## 2013 Delta Plan

- Original Delta Plan adopted in May 2013
  - Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta
  - Policy RR P1, Prioritization of State Investments in Delta Levees and Risk Reduction (23 CCR section 5012)
  - Recommendation RR R4, Actions for the Prioritization of State Investments in Delta Levees

# Prior Council Actions

## 2013 Policy RR P1 (23 CCR section 5012)

- Guides **interim** State spending priorities for:
  - emergency preparedness
  - response and recovery
  - integrated flood management
- Interim priorities establish 3 benefit categories and 3 goals
- Policy expects the Department of Water Resources (DWR) to balance achievement of the goals over time
- Policy applies to levee operations, levee maintenance, and levee improvements



# Prior Council Actions

## 2013 Policy RR P1 Interim Priorities

Goals	Localized Flood Protection	Levee Network	Ecosystem Conservation
1	Protect existing urban and adjacent areas by providing 200-year flood protection.	Protect water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and the primary channels that carry fresh water through the Delta	Protect existing and provide for a net increase in channel-margin habitat
2	Protect small communities and critical infrastructure of statewide importance (located outside of urban areas).	Protect floodwater conveyance in and through the Delta to a level consistent with the State Plan of Flood Control for project levees.	Protect existing and provide for net enhancement of the floodplain habitat.
3	Protect agriculture and local working landscapes.	Protect cultural, historic, aesthetic and recreational resources (Delta as Place).	Protect existing and provide for net enhancements of wetlands.

# Prior Council Actions

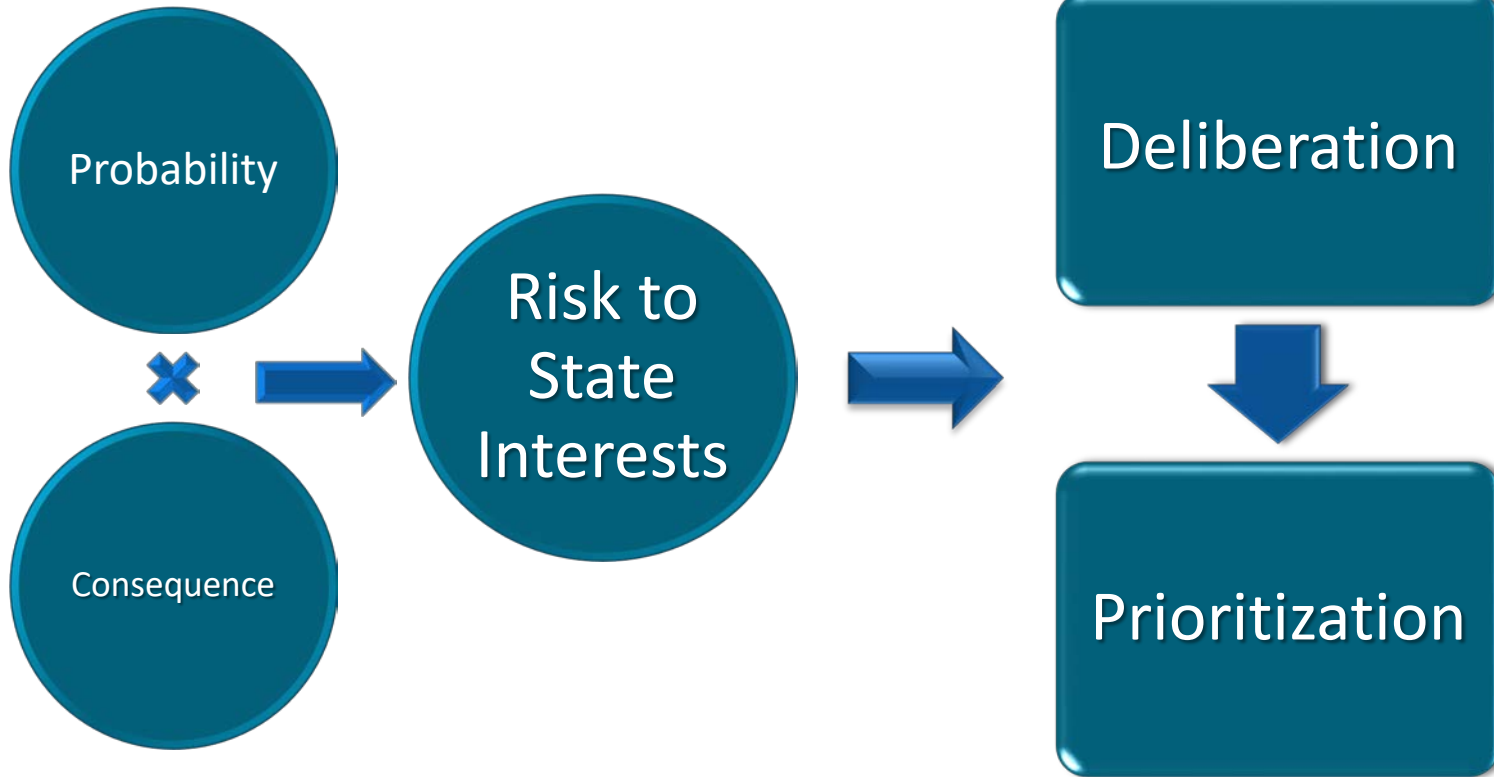
## 2013 Recommendation RR R4

- Council committed to develop a method to prioritize State investments in Delta levee operations, maintenance, and improvement projects
- These priorities were to
  - Be consistent with the Delta Reform Act
  - Identify guiding principles
  - Provide a basis for public reporting
  - Be considered for incorporation into the Delta Plan

# Delta Levees Investment Strategy (DLIS) Process

- In 2014 Council began formulating a comprehensive method to analyze State interests and risks in the Delta
- State interests
  - risk to public safety, property, infrastructure
  - water supply reliability
  - Delta ecosystem
  - unique Delta as Place attributes
- Risk
  - probability x consequences
- Decision support tool (DST) to support deliberations

# DLIS Process



**DLIS Tool**

**Council Process**

# Delta Levee Investment Strategy (DLIS) Process

## Key Milestones:

- State Investment in Delta Levees: Key Issues (2014)
- Delta Flood Management Investment Strategy Principles (2015)
- Independent Scientific Review Panel Report (2015)
- DLIS Risk Analysis Methodology Report (2017)
- Memorandum of Understanding with DWR and CVFPB (2017)
- DLIS Delta Plan Amendment (2018)

# Delta Levee Investment (DLIS) Process

## Public process since 2014

- 44 Council meetings
- Joint Council meeting with CVFPB
- 71 outreach meetings
- 60+ meetings with other public agencies
- 12 public workshops

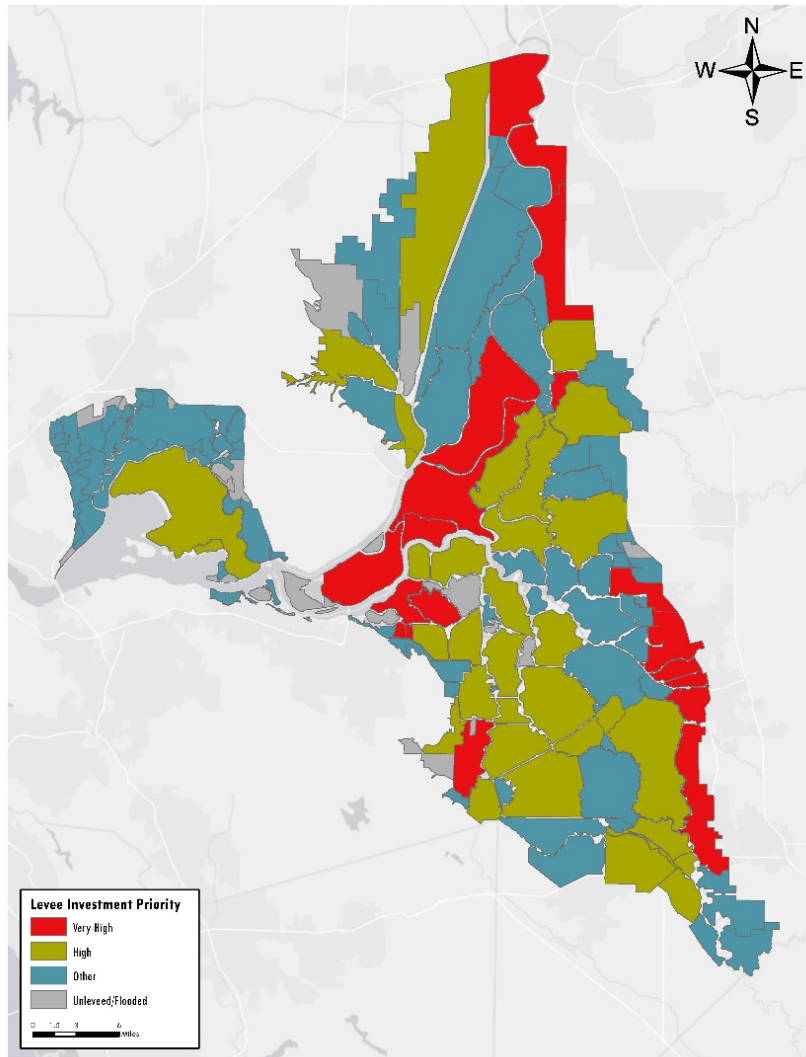




# Delta Levee Investment (DLIS) Process

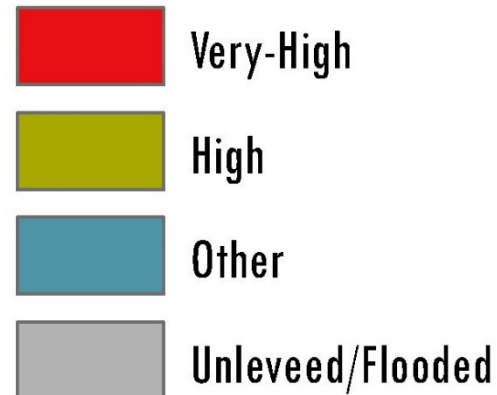
- DLIS establishes a three-tiered priority list of Delta islands and tracts for State investments in levee improvements and levee rehabilitation
  - Very-High Priority
  - High Priority
  - Other Priority
- DLIS priorities generally address relationship between
  - flood risk of each island or tract, and
  - State interests on each island or tract

# Delta Levee Investment (DLIS) Map



## Map Key

### Levee Investment Priority



# Prior Council Actions

## 2018 Delta Plan Amendments

- Council adopted Delta Plan Amendments in April 2018 (Resolution 2018-01)
  - Amended Chapter 7 to incorporate DLIS and amended Policy RR P1 to establish DLIS priorities for Delta islands and tracts
  - Added new terms used in Policy RR P1 to Delta Plan glossary
  - Certified a Program Environmental Impact Report for the Delta Plan Amendments
  - Directed staff to initiate rulemaking process to amend Section 5012 to implement the amended Policy RR P1 and add the new definitions to Section 5001
  - Authorized Executive Officer to make non-substantive and technical changes identified and directed by the Council at the April 2018 meeting and those identified subsequent to that meeting

# Proposed Amendment to Section 5012 (DLIS) (RR P1)

- Provides that funding for **levee maintenance** will continue to be available throughout the Delta where authorized by the subventions program (subsection (a))
- Identifies the DLIS priorities by island or tract to guide State discretionary investments in **levee improvement** and **levee rehabilitation** (subsection (b)(1))
- Requires DWR to fund **levee improvement** and **levee rehabilitation** projects on **Very-High Priority** islands or tracts before funding such projects on **High Priority** islands or tracts, and before funding projects on **Other Priority** islands or tracts (subsection (b)(1))

# Proposed Amendment to Section 5012 (DLIS) (RR P1)

- Requires DWR to annually submit to the Council a written report including specific information about its decisions to award State funds for Delta **levee improvement** and **levee rehabilitation** projects (subsection (b)(2)(A))
- When DWR's contributions toward Delta such projects deviate from the DLIS priorities, the annual report must identify:
  - Identify how the funding is inconsistent with the DLIS priorities
  - Describe why variation from the DLIS priorities is necessary
  - Explain how the funding nevertheless protects, lives, property, and State interests (subsection (b)(2)(A))

# Proposed Amendment to Section 5001 (Definitions) (Delta Plan Glossary)

- Defines new terms, including:
  - **“Levee improvement”** means the levee improvements intended to reduce the probability of flooding. An example of a levee improvement would be changing a levee geometry to reach a higher level of protection. (subsection (w))
  - **“Levee rehabilitation”** means levee repair work needed to restore the levee integrity and preserve existing flood risk reduction benefits. Examples of rehabilitation work include raising the levee crown to offset subsidence, flattening waterside slopes, constructing landside berms, and widening levee crowns. (subsection (y))



# Proposed Amendment to Section 5001 (Definitions) (Delta Plan Glossary)

- Defines new terms, including:
  - **“Levee maintenance”** means annual or routine levee maintenance work intended to preserve the levee system in its current condition. Examples of maintenance work include patrols, surveys and inspections, extermination and control of burrowing animals, work on the levee crown to improve access or drainage, removing vegetation or debris, control of seepage and boils, cleaning drains and toe ditches, restoring rock protection, and maintenance of levee-related habitat improvement sites. (subsection (x))

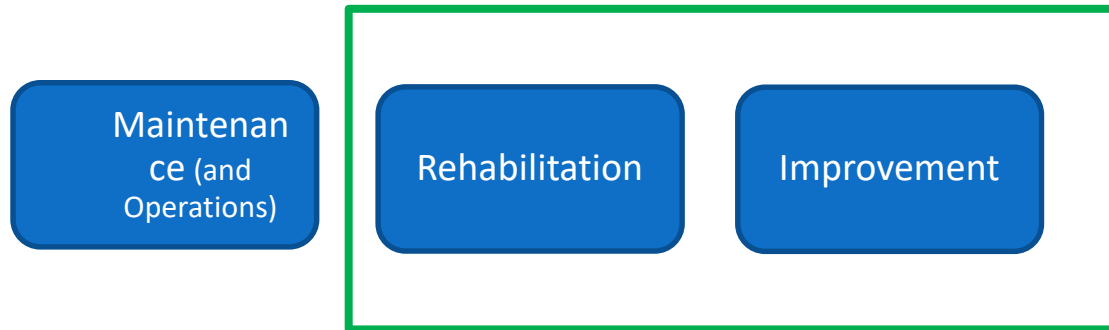
### Interim Priority Tiers

**RR P1  
(Delta Plan)**



### DLIS Prioritization

**RR P1  
(Proposed)**



# Policy RR P1

## Non-Substantive Changes Since April 2018

- Clarified DWR reporting requirements
- Clarified reference to “rehabilitation”
- Added definitions of “Very-High Priority Islands or Tracts”, “High Priority Islands or Tracts”, “Other Priority Islands or Tracts” to Section 5001
- Various other clarifying language additions and edits

# Rulemaking Process

- Notice of Proposed Rulemaking
  - Filed and published in California Regulatory Notice Register on July 5, 2019
  - 45-day public comment period July 2, 2019 through August 19, 2019
  - Noticed public hearing
- Council received 26 comment letters
  - Available at [www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov)
- Written responses to be provided in Final Statement of Reasons

# Comments

- Alignment of definitions and objectives with other programs
- Request for extension
- Consistency with existing law and authority
- Would add additional process and delays without improving outcomes
- EAD methodology should account for system-wide economic impacts
- Adequacy of economic analysis of the regulation
- Insufficient consultation to develop priorities with the Flood Board
- Reduced funding for small and vulnerable communities

# Supporting Documents

**Attachment 1**

Resolution 2019-02 – Public Hearing on Proposed Rulemaking

**Attachment 2**

Resolution 2018-01 – Delta Plan Amendments and PEIR

**Attachment 3**

Proposed Amendment to Existing Regulation 23 CCR sections 5001 and 5012

**Attachment 4**

Proposed Delta Plan Appendix P

**Attachment 5**

Initial Statement of Reasons and Economic and Fiscal Impact Assessment

**Attachment 6**

Changes to Proposed Regulation Since April 2018 Adoption

**Attachment 7**

Economic and Fiscal Impact Statement



# Staff Recommendation

Following completion of the public hearing, **adopt proposed Resolution 2019-02** (Attachment 1 to the staff report) authorizing the Executive Officer, or designee(s) to:

- prepare written responses to public comments
- prepare other pertinent documents, including a Final Statement of Reasons
- incorporate any changes identified by the Council at today's meeting, and any other changes as necessary subsequent to the meeting
- present the proposed regulations, including any such changes and documents, to the Council for consideration and possible adoption at a future Council meeting
- take such actions and steps as are necessary to effect the intent of the resolution