

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2019-3

DETERMINATION OF CEQA EXEMPTION; ENDORSEMENT OF FIVE-YEAR REVIEW OF THE DELTA PLAN

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 *et seq.*, directs the Delta Stewardship Council (Council) to develop an enforceable, comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (collectively, the Delta); and

WHEREAS, the Delta Reform Act directs that the Delta Plan must further the “coequal goals” (Water Code § 85300); and

WHEREAS, the Delta Reform Act defines the coequal goals to mean the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem (Water Code § 85054); and

WHEREAS, the Delta Reform Act directs that the coequal goals must 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 (Water Code § 85054); and

WHEREAS, the Delta Reform Act recognizes that the eight policy objectives set forth in Water Code § 85020 are inherent in the coequal goals; and

WHEREAS, the Delta Reform Act mandates that a state or local agency that proposes to undertake a “covered action,” as defined in Water Code section 85057.5, subd. (a), must prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and must submit that certification to the Council (Water Code § 85225); and

WHEREAS, on May 16, 2013, the Council certified the Delta Plan Program Environmental Impact Report (State Clearinghouse No. 2010122028) and adopted the Delta Plan; and

WHEREAS, on April 26, 2018, the Council certified the Delta Plan Amendments Program Environmental Impact Report (State Clearinghouse No. 2017032048) and adopted the Delta Plan Amendments; and

WHEREAS, the Delta Reform Act states that “[t]he Council shall review the Delta Plan at least once every five years and may revise it as the Council deems appropriate.” (Water Code § 85300, subd. (c)); and

WHEREAS, in January 2018, Council staff initiated the five-year review of the Delta Plan, which has involved a comprehensive staff review of the Delta Plan; outreach including 31 individual, agency and stakeholder focus group interviews and workshops

and an online survey; assessment of the Delta Plan covered action process; assessment and analysis of Delta Plan implementation efforts including progress towards meeting the Plan's performance measures; Delta Plan Interagency Implementation Committee (DPIIC) surveys and interviews to better assist coordination with DPIIC; and development of findings, lessons learned, and recommendations that were presented to the Council at duly noticed public meetings on May 23-24, 2018, March 21, 2019, and August 22, 2019 that were held to receive Comments from the Council and the public; and

WHEREAS, Council staff has prepared a Five-Year Review of the Delta Plan ("Five-Year Review Report" or "project") for consideration and endorsement by the Council, which recommends ways in which the Delta Plan can be strengthened, including outreach processes in order to assist the Council in developing potential future amendments to the Delta Plan and to Delta Plan implementation strategies; and

WHEREAS, the proposed project consists of endorsement of the recommendations in the Five-Year Review Report, which concern outreach and early consultation, procedural adjustments to strengthen Delta Plan implementation, adaptive management, best available science, performance measures, staff development and technological advancement, environmental justice and disadvantaged communities, climate change risks to the Delta, federal cooperation and participation, and Delta as an evolving place; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq.* and the Guidelines for Implementation of CEQA (State CEQA Guidelines), California Code of Regulations, title 14, section 15000 *et seq.*, Council staff has independently determined that the Five-Year Review Report is exempt from CEQA environmental review pursuant to the following statutory and categorical exemptions; and

WHEREAS, pursuant to the statutory exemption in Public Resources Code section 21102 and State CEQA Guidelines section 15262 (Feasibility and Planning studies) which applies to projects "involving only feasibility or planning studies for possible future actions which the agency . . . has not yet approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors," the project is exempt from CEQA because it involves evaluation of the adopted Delta Plan and recommendations for possible future planning actions, it is the first step in a planning study, it will not have a legally binding effect on later activities, and will not have a significant effect, or any physical effect, on the environment, and therefore there are no environmental factors to consider; and

WHEREAS, pursuant to the categorical exemption in State CEQA Guidelines section 15305 (Information Collection) which "consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded," the project is exempt from CEQA because the Five-Year Review Report has involved consulting with other public agencies, public input, and the input of the Delta Independent Science Board; none of

these activities has involved a disturbance of any sort to an environmental resource; and the information obtained will be used to inform potential future planning actions by the Council; and

WHEREAS, pursuant to the “common sense exemption” in State CEQA Guidelines section 15161(b)(3), which states “the general rule that CEQA applies only to projects which have a potential for causing a significant effect on the environment. Where it can be seen with a certainty that there is not possibility that the activity in question may have a significant effect on the environment, the activity will not be subject to CEQA,” the project is exempt from CEQA because it consists of an evaluation of the implementation of the Delta Plan since 2013, makes findings regarding the past success of the Delta Plan, and makes recommendations regarding possible changes to the Delta Plan for future consideration by the Council as part of the planning process, and because the Five-Year Review Report involves evaluations and recommendations for possible future planning actions, it can be seen with a certainty that the Five-Year Review Report will not have a significant effect, or any physical effect, on the environment; and

WHEREAS, the Council has independently reviewed and considered the basis for the statutory and categorical exemptions prior to taking any approval action on the Five-Year Review Report and, exercising its independent judgment, based on the entire record before it, has determined that the project is exempt from CEQA.

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.
2. The Council exercises its independent judgment and determines that the project is exempt from CEQA pursuant to Public Resources Code section 21102 and State CEQA Guidelines sections 15061(b)(3), 15262 and 15306.
3. The Council endorses the Five-Year Review Report and the recommendations in the Five-Year Review Report.
4. The Council directs the Executive Office to incorporate any errata and any other non-substantive, technical changes in the Five-Year Review Report that are identified at the October 24, 2019 meeting.

CERTIFICATION

On a motion by Councilmember Ken Weinberg, seconded by Councilmember Mike Gatto, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by a vote of seven in favor to zero opposed at a regular meeting of the Delta Stewardship Council on October 24, 2019.

Dated: October 24, 2019

[Signature on File]

Shalita Brydie

Clerk of the Board of the Delta Stewardship Council