



## **ACTION ITEM**

### Delta Levees Investment Strategy Update, California Environmental Quality Act Addendum Approval, and Rulemaking Authorization

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**Summary:** In March 2020, the Council directed staff to evaluate new information that could affect investment priorities for the Sacramento-San Joaquin Delta (Delta) levees considered in the Delta Levees Investment Strategy (DLIS). At today's meeting, following public comments, staff will request approval of: 1) an addendum to the 2018 Delta Plan Amendments Program Environmental Impact Report (PEIR); 2) an updated DLIS prioritization; 3) Revised Preliminary Draft Regulatory Language for Delta Plan Policy **RR P1** for purposes of rulemaking; and 4) reinitiation of rulemaking.

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#### **REQUESTED ACTION**

Staff recommends that the Council adopt the attached Resolution 2021-02 (Resolution) (Staff Report Attachment 1), through which the Council would:

- (1) approve the Addendum to the 2018 Delta Plan Amendments Program Environmental Impact Report (PEIR) (Resolution Attachment 2);
- (2) move Dutch Slough and McCormick Williamson Tract from Other Priority to Very-High Priority; and move Pescadero District, Stewart Tract, and Central Stockton from Other Priority to High Priority,
- (3) approve the staff-recommended Delta Levees Investment and Risk Reduction Strategy (DLIS) Prioritization Table and Map (Resolution Attachment 3) for purposes of initiating rulemaking to amend Delta Plan Policy RR P1;
- (4) approve the staff-recommended DLIS Modified Preliminary Draft Regulatory Language (Resolution Attachment 4) for purposes of initiating rulemaking to amend Delta Plan Policy RR P1;
- (5) direct Council staff to initiate rulemaking to amend: a) Delta Plan Policy RR P1, set forth in 23 CCR section 5012, "Prioritization of State Investments in Delta Levees and Risk Reduction," in accordance with the DLIS Prioritization Table and Map (Resolution Attachment 3), and the DLIS Modified Preliminary Draft Regulatory Language (Resolution Attachment 4); and b) the regulation in 23 CCR section 5001 to add new glossary terms set forth in Resolution Attachment 4;
- (6) direct and authorize the Executive Officer, or delegee, to make any non-

substantive modifications to the text of the proposed regulations deemed necessary in order to complete the rulemaking process, and to inform the Council of any such changes;

- (7) direct the Executive Officer, or delegee, to correct any errata or make any changes identified by the Council at this meeting, and to finalize all elements of the rulemaking package and submit it to the OAL once complete; and
- (8) direct the Executive Officer, or delegee, to take such steps as are necessary to comply with the California Environmental Quality Act (CEQA) concerning the Addendum and to effect the intent of the Resolution.

## **INTRODUCTION**

In 2013, pursuant to Water Code section 85306, the Council adopted Risk Reduction Policy **RR P1** (23 CCR section 5012) which provides interim priorities to guide discretionary investments in Delta levees. In 2014, Council staff began developing an update to the interim policy. In this effort, the Council has engaged stakeholders to identify state interests, develop a methodology to assess risks to those interests, and develop levee investment priorities based on those risks. However, in 2019 before the Council completed the rulemaking process to amend **RR P1**, new information was published by the Department of Water Resources (DWR) that had the potential to change the Council's prioritization. In March 2020, the Council withdrew **RR P1** from the rulemaking process to evaluate this new information and any implications it may have on the proposed DLIS regulations.

Since that time, Council staff has updated the data that informs the DLIS risk analysis with new topographic information and water surface elevations; consulted with DWR and the Central Valley Flood Protection Board (Flood Board) to address comments among the three agencies on modified preliminary regulatory language, and developed an update to the Delta levee prioritization based on best available information.

Council staff has also been working to address comments by State agencies and Delta stakeholders on the draft regulatory language presented during the previous rulemaking process. A redline version of the proposed draft regulatory language can be seen in Resolution Attachment 4. The proposed regulations establish reporting requirements for DWR to inform the Council and the public about where and why Delta levee investments are made. The proposed regulations are designed to increase transparency and inform decision-makers about how strategic investments in Delta levees can reduce risk to State interests over time. This information is intended to inform future risk reduction investment decisions.

The updated risk analysis shows that improvements in levees can and do change DLIS priorities for Delta islands and tracts, moving islands and tracts up and down the priority tiers (i.e., Very-High Priority, High Priority, Other Priority). DLIS was designed to be responsive to new data. Improvements to Delta levees will continue to occur and will necessitate updates to DLIS regulations in the future.

Council staff presented the updated risk analysis, levee priorities, and modified preliminary regulatory language to the Council at the May 2021 Council meeting. Today, Council staff will be requesting authorization to adjust the prioritization table and maps, and to proceed with rulemaking, following approval of an Addendum to the 2018 Delta Plan Amendments PEIR.

## **BACKGROUND**

### *Delta and Suisun Marsh Levees*

The Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform Act”), set forth in Water Code section 85000 et seq. defines “Delta” to include the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code. (Water Code section 85058.) The Sacramento-San Joaquin Delta is home to about 500,000 people and comprises approximately 1,300 square miles of low-lying, flood-prone lands bound by 1,100 miles of levees. The Suisun Marsh, located immediately downstream from the Sacramento-San Joaquin Delta and north of Grizzly Bay, includes about 230 miles of levees that reduce flood risk and help manage flows for wetlands. About 80 miles of these levees protect Delta water quality and terrestrial and aquatic habitat of statewide importance.

Delta levees reduce flood risk to people, property, water supply, ecosystems, and infrastructure of statewide importance. Levee failure can cause catastrophic flooding and can potentially cause injury or loss of life, disrupt water supplies, and possibly damage property, infrastructure, and environmental resources of importance to the entire state. Although the state does not currently have a comprehensive method to prioritize its investments in operations, maintenance, and improvement projects for Delta levees; the Delta Reform Act directs the Council, in consultation with the Flood Board to recommend such priorities (Water Code Section 85306).

### *Delta Reform Act Requirements*

Pursuant to the Delta Reform Act, the Council has developed an enforceable, comprehensive, long-term management plan for the Delta known as the Delta Plan (Water Code section 85300). To implement the Delta Plan and achieve the coequal goals, inherent subgoals, and policy objectives set forth in the Delta Reform Act, the

Delta Plan contains regulatory policies, codified in the California Code of Regulations, Sections 5001 through 5016.

The Delta Reform Act requires the Delta Plan to attempt to reduce risks to people, property, and State interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments (Water Code section 85305(a)); and to recommend priorities for State investment in levee operation, maintenance, and improvements in the Delta, including both project levees (which are a part of the State Plan of Flood Control), and nonproject levees (which are not a part of the State Plan of Flood Control) (Water Code section 85306).

*Delta Levees Investment Strategy Development Process*

When the Delta Plan was adopted by the Council in 2013 it included an interim policy (regulation) **RR P1** to temporarily address the requirements of Water Code section 85306. In 2014, the Council began developing a revised **RR P1**, supported by DLIS. From 2014-2017, Council staff collected and used existing data and information from numerous sources to evaluate risks to State interests in the Delta including risks to:

- 1) public safety and property (identified using Estimated Annual Damages (EAD) and Estimated Annual Fatalities (EAF))<sup>1</sup>,
- 2) water supply reliability (identified as 22 Delta islands or tracts providing water supply benefits),
- 3) the Delta ecosystem (identified using acres flooded per year), and
- 4) the unique attributes of the Delta as an evolving place (identified as legacy communities, prime farmland, and public roadways).

As part of the DLIS process, Council staff developed a computerized DLIS-Decision Support Tool (DST), designed to explore flood risks to state interests on Delta islands and tracts protected by levees. The DLIS-DST combines risk analysis, economics, engineering, and decision-making techniques to assemble a comprehensive investment strategy for Delta levees. Staff used the DLIS-DST to create risk maps that helped inform Council decision-making for an update to RR P1 approved by the Council as part of the 2018 Delta Plan Amendments.

Using the DLIS-DST, the Council established a three-tiered priority list– **Very-High Priority, High Priority, and Other Priority** – for State investments in Delta levee improvements. The priorities provide an ordering of the islands and tracts based on the flood risk and the State interests that the surrounding levees protect. The Council initiated rulemaking for RR P1 based on this work in 2019.

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<sup>1</sup> EAD and EAF are widely adopted industry standards for assessing risk to life and property.

In June of 2019, DWR published new 2017 Light Detecting and Ranging (or LiDAR) elevation data for the Delta and Suisun Marsh, providing updated information about the height of the levees and island or tract floors. This updated levee geometry data had the potential to change the Council's understanding of risk in the Delta. To allow staff to evaluate the LiDAR information and determine whether it would change the risk assessment and priorities identified in the 2018 Delta Plan Amendments, on March 26, 2020, the Council issued a Notice of Decision Not to Proceed with the proposed rulemaking on March 26, 2020, and modified the Delta Plan to restore the interim RR P1 priorities established in 2013.

The following discussions refer to the prioritization completed for the 2018 Delta Plan Amendments as "DLIS 2018" and to the current updated priorities as "DLIS 2021".

### **RISK ANALYSIS UPDATE**

Council staff presented the results from the updated risk analysis in the May 2021 Council Meeting staff report, (see Staff Report Attachment 3). Staff-recommended adjustments to the prioritization are included in this staff report (see Resolution Attachment 3) and discussed below.

#### *Staff-Recommended Adjustments to the DLIS 2021 Priorities*

DLIS 2018 included Council-approved adjustments to the island and tract priorities based on special considerations that were not explicitly accounted for in the DLIS-DST. These were:

- **Dutch Slough** and **McCormack-Williamson Tract** were moved from Other Priority to Very-High Priority because of existing plans, available funding, and/or ongoing construction of habitat restoration projects.
- **Pescadero District** and **Stewart Tract** were moved from Other Priority to High Priority because they are located within Priority Habitat Restoration Areas identified in Delta Plan Policy **ER P3**, and feature lands at a suitable elevation for restoration of tidal habitat, riparian habitat, seasonal wetlands, or transitional habitat.
- **Honker Bay Tract** was moved from Other Priority to High Priority because it does not provide 50-year flood protection to State Route 4 consistent with Caltrans' guidance for State highways. The DST supporting DLIS 2021 moves Honker Bay to High priority without manual adjustment.

Based on the adjustments made by the Council in 2018, as identified in the Resolution, Council staff recommends that the Council **move Dutch Slough and McCormack Williamson Tract from Other Priority to Very-High Priority** in DLIS 2021. For the same reasons, Council staff also recommends that the Council **move**

**Pescadero District and Stewart Tract from Other Priority to High Priority** in DLIS 2021.

*Social Vulnerability*

Since DLIS 2018 was adopted, the Council has undertaken an analysis of the impacts of climate change on the Delta through *Delta Adapts*. One of the areas of concern that the Council did not include in its original analysis were communities with high social vulnerability. Delta Adapts defines vulnerability as the intersection of exposure to climate hazards, sensitivity to those hazards, and adaptive capacity, or the ability to recover from and adapt to climate hazards.

Most islands and tracts with a significant population of vulnerable individuals are identified in DLIS 2021 as Very-High Priority or High Priority. Two notable exceptions to this are **West Sacramento** and **Central Stockton**. Flooding analysis conducted for *Delta Adapts* shows that West Sacramento has greater than 200-year flood protection through 2085. Central Stockton, however, could see its levees overtopped by 2050.

For these reasons, as identified in the Resolution, Council staff recommend that the Council **move Central Stockton from Other Priority to High Priority** in DLIS 2021.

**MODIFIED PRELIMINARY DRAFT REGULATORY LANGUAGE**

A redline version of the text of the proposed regulations is provided in Resolution Attachment 4. Proposed changes to the modified preliminary draft regulatory language made in response to the new information described above and comments received on the previous rulemaking process fall into four categories:

- 1) including operations and maintenance as a priority,
- 2) changes to proposed definitions,
- 3) changes to the DLIS priority table and map of islands and tracts, and
- 4) changes to the DWR levee funding reporting requirements.

*Including Operation and Maintenance as a Priority*

Operation and maintenance activities are included in the modified preliminary draft regulatory language, consistent with the Council's mandate in Water Code 85306 to "recommend in the Delta Plan priorities for state investments in *levee operation, maintenance, and improvements.*" [Emphasis added] Previous versions of the proposed regulation did not address levee operation and maintenance. These activities are included in the update in response to stakeholder input, as well as input from the Flood Board and DWR. Doing this affirms the critical role of

operation and maintenance in reducing risk and aligns with Flood Board and DWR regulations and guidance.

*Changes to Proposed Definitions*

Several definitions are modified in the modified preliminary draft regulatory language in response to comments from stakeholders, DWR, and the Flood Board. Highlights include:

- Refining the definition of “levee improvement” to provide clarity and examples of the types of activities that would be deemed improvements.
- Refining the definition of “levee operation and maintenance”. The proposed changes are in alignment with a June 2018 resolution adopted by the Flood Board describing levee operation and maintenance. (See Staff Report Attachment 3)
- Removing “levee rehabilitation” from the definitions. This was removed from the definitions because there is no consensus across agencies and programs regarding its meaning. Projects that are defined as rehabilitation will be assessed against the Council’s proposed definitions for **Operations and Maintenance** and **Levee Improvement** for their placement in the prioritization and reporting requirements.

*Other Stakeholder Comments*

Council staff received additional stakeholder comments that did not result in changes to the preliminary draft proposed language. These comments and the reasons they did not result in changes are summarized below.

*1) The Subventions program should be excluded from the prioritization.*

The proposed update to **RR P1** would regulate activities, not programs. This allows the regulation to respond to new programs or activities as they change over time. Inclusion or exclusion of programs such as Subventions could create a need to amend the regulatory language to adapt to funding and program changes. Keeping the regulation specific to activities allows the regulation to adapt without the need to go through subsequent rulemaking processes each time a new Delta levee program or funding source is created.

*2) Islands and tracts should not be prioritized until the whole Delta has been raised to the Bulletin 198-82 Standard*

The Council is committed to improving levee infrastructure to meet current safety standards and reduce flood risk. The DLIS prioritization does not exclude any Delta island or tract from investment. Rather, the prioritization recommends an order in which investment should be made based on those islands and tracts where flooding poses the greatest risk. As investments are

made, and levees are improved (thereby reducing relative flood risk for a particular levee segment), those islands and tracts will move to the bottom of the prioritization and other levees will move up. Delta Plan Performance Measure (PM) 7.3 tracks progress made toward meeting these standards. This PM anticipates that levees in the Delta will be improved over time to reduce the risk to State interests and should be used to inform future decision-making.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT CONSIDERATIONS**

As a lead agency, the Council identified the 2018 Delta Plan Amendments as a project under CEQA. CEQA requires a lead agency to evaluate and consider the potential significant adverse environmental consequences of a project before the agency adopts or implements the project. On April 26, 2018, the Council certified the Program Environmental Impact Report (PEIR) (State Clearinghouse #2017032048) for the Delta Plan Amendments that included **RR P1** supported by DLIS 2018.

Section 15164(a) of the California Environmental Quality Act (CEQA) Guidelines states that a lead agency or a responsible agency shall prepare an addendum to a previously certified Environmental Impact Report (EIR) if some changes or additions to a project are necessary but none of the following conditions described in section 15162 of the CEQA Guidelines requiring preparation of a subsequent EIR have occurred:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

- b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the project proponents decline to adopt the mitigation measure or alternative; or
- d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Council staff has completed preparation of an EIR Addendum to the Delta Plan Amendments PEIR. The EIR Addendum has been prepared in compliance with CEQA (Public Resources Code (Pub. Resources Code) section 21000, et seq.) and the State CEQA Guidelines (14 CCR section 15000, et seq.). The EIR Addendum concludes that the proposed revisions to the 2018 Delta Plan Amendments do not trigger any of the CEQA Guidelines section 15162 conditions described above, and that the preparation of an addendum is therefore appropriate. In developing the Addendum, the Council recognizes the importance of providing full disclosure to the public regarding the potential significant environmental effects of the proposed revisions to **RR P1** and DLIS 2021.

For these reasons, Council staff recommends that the Council **approve the Addendum to the 2018 Delta Plan Amendments PEIR** provided as Resolution Attachment 2.

#### **TODAY'S MEETING**

Following a staff presentation and public comments, staff will request approval of Resolution 2021-02 (Staff Report Attachment 1), described at the beginning of this report.

#### **FISCAL INFORMATION**

Not applicable.

## LIST OF ATTACHMENTS

- Attachment 1: Resolution 2021-02: Approval of the Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1 (Cal. Code Regs., tit. 23, §§ 5001 and 5012)
- Resolution Attachment 1 – Delta Plan Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta
  - Resolution Attachment 2 – Delta Plan Amendments Program Environmental Impact Report – Delta Levees Investment Strategy Addendum
  - Resolution Attachment 3 – Staff-Recommended DLIS Prioritization Table and Map
  - Resolution Attachment 4 – Staff-Recommended Modified Preliminary Draft Regulatory Language for Delta Plan Policy **RR P1**
- Attachment 2: May 2021 Council Meeting Delta Levees Investment Strategy Update Information Item
- Attachment 3: Central Valley Flood Protection Board Resolution No. 2018-06 For the Acceptable Operation and Maintenance of the State Plan of Flood Control

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