



ACTION ITEM

Consideration and Possible Adoption of Revisions to 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 (“DLIS”) (Resolution 2023-05)

Summary

Council staff proposes modifications to the regulatory language of Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, §§ 5001, 5012) concerning the Delta Levees Investment Strategy (DLIS). The changes are proposed in response to comments received from the Office of Administrative Law (OAL) pursuant to the Administrative Procedure Act (Gov. Code, § 11340 et seq.) and were recently circulated for a 15-day public review period. Staff recommends that the Council adopt Resolution 2023-05, which would authorize Council staff to submit the proposed revisions as part of the rulemaking package to OAL.

Background

On February 23, 2023, the Council adopted Resolution 2023-01, directing staff to finalize a rulemaking package for the DLIS and giving staff authority to make non-substantive changes to the adopted DLIS rulemaking package as were necessary to effect the intent of that resolution. Subsequently, staff submitted the rulemaking package to the Department of Finance (DOF) in March 2023, and after DOF’s approval, submitted the rulemaking package to OAL on May 18, 2023.

Staff received comments from OAL on the rulemaking package on June 27, 2023, including, among other technical, non-substantive changes, comments recommending clarifying changes to the proposed regulatory language for California Code of Regulations, title 23, section 5012 that are considered sufficiently related substantive changes under Government Code section 11346.8 requiring an additional 15-day public comment period. In response to these comments from OAL, staff has completed proposed modifications to the regulatory text and noticed

a 15-day public comment period from July 7, 2023, through July 21, 2023. A summary of comments received and staff's proposed responses to the comments pertaining to the sufficiently related revisions to the regulation will be provided to the Council prior to the July 27, 2023 meeting.

The substantive changes to the proposed regulatory language include the insertion in Appendix P of three maps originally included as part of the Initial Statement of Reasons (ISOR) but not as part of the proposed regulatory text. These maps identify islands and tracts listed in Table 1 of the regulation. The substantive changes also include a clarification regarding the content of the annual written report required to be submitted by the Department of Water Resources (DWR) to the Council.

Specifically, the following modifications in response to comments from OAL are proposed in Attachment 1 to Resolution 2023-05:

California Code of Regulations, title 23, section 5001

- 5001(ii)(4)(B): a space is added between the word "section" and the number 15333.
- 5001, Authority cited: Section 85210 remains, the subsections are removed. No sections are added or removed.
- 5001, Reference: Sections are placed in numerical sequence. No sections are added or removed.

California Code of Regulations, title 23, section 5012

- 5012(a)(1): Two commas are replaced with the word "and."
- 5012(b): The phrase "which is incorporated herein by this reference as if fully set forth" is revised to simplify language and conform to OAL's preferred style by instead saying "which is incorporated by reference."
- 5012(b): Table 1, Misplaced asterisks following the names of three islands are removed.
- 5012(b): Appendix P: August 2021 date is added to the regional map as the Council adoption date. Three close-up maps that were part of the ISOR are added.
- 5012(c)(1): Edits are proposed to clarify the content of the DWR report. No content requirements are added or removed.

- 5012(c)(2): Edits are proposed to clarify the requirements of the content of the DWR report. No content requirements are added or removed.
- 5012(c)(2)(C) Corrected an inaccurate cross reference.
- 5102(c)(2)(E) Corrected an inaccurate cross reference.
- 5012(c)(2)(F): Misplaced capitalization of the word “the” is removed.
- 5012, Authority cited: Section 85210 remains, the subsections are removed. No sections are added or removed.

California Code of Regulations, title 23, Appendix P

- Appendix P: August 2021 date is added to the regional map as the Council adoption date. Three close-up maps that were part of the ISOR are added.

Requested Action

Staff recommends the Council adopt Resolution 2023-05 in which the Council would resolve the following:

Section 1. The Executive Officer, or their designee, is authorized to take the actions necessary to make effective these regulations for the Delta Plan (Cal. Code Regs., § 5001, 5012) specific to the DLIS in substantially the same form as presented.

Section 2. The Executive Officer, or their designee, is authorized to execute and deliver any documents and take any steps, including making any changes to these regulations to secure approval by the OAL, that the Executive Officer, or their designee, may deem necessary or advisable to effectuate the purposes of the resolution.

List of Attachments

Attachment 1: Resolution 2023-05

Attachment 2 (to be provided prior to July 27, 2023, Council meeting): Summary of comments received and proposed responses to sufficiently related changes to proposed regulations

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