

NOV 2022

Delta Levees Investment Strategy

Public Hearing Regarding Proposed Regulation



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

Agenda

1. Introduction
2. Background & Authority
3. The Delta Levees Investment Strategy
4. Proposed Regulatory Amendments
5. Rulemaking Process
6. Staff Recommendation
7. Public Hearing

INTRODUCTION

Summary of Requested Action

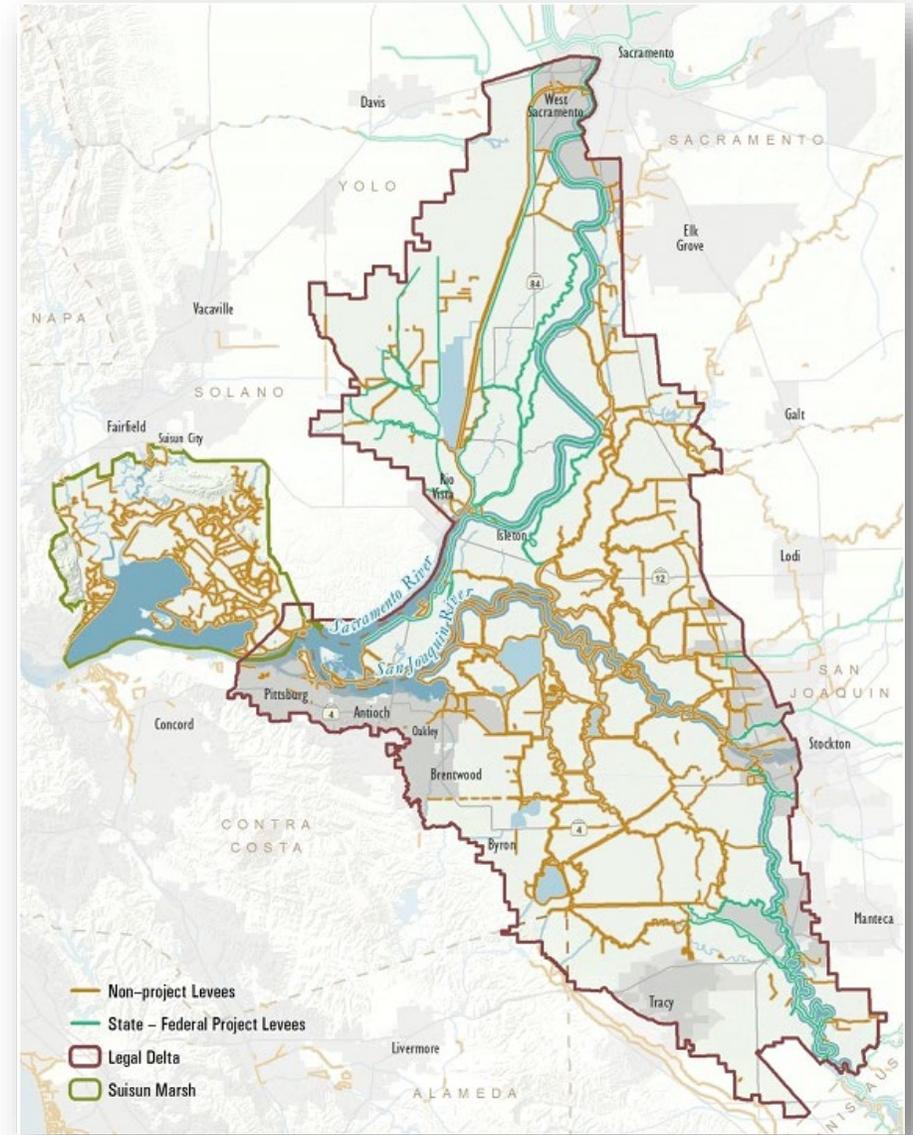
- The purpose of today's hearing is to **obtain public comment on proposed regulatory amendments** to implement the Delta Levees Investment Strategy (DLIS)
- Staff will **seek Council direction regarding next steps** in the rulemaking process, which may include:
 - taking under submission **written and oral comments** received during the public comment period and at the hearing and
 - **preparing responses to comments** and a Final Statement of Reasons (FSOR)



BACKGROUND & AUTHORITY

Background

- Both project levees and non-project levees are located in the Delta
- Many State programs provide financial assistance to maintain and improve Delta levees
- No comprehensive strategy to prioritize levee investments
- Proposed rulemaking would implement, interpret, and make specific several portions of Water Code



Delta Reform Act Water Code Section 85306

“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 a part of the State Plan of Flood Control and nonproject levees.”



Risk Reduction Policy RR P1

- In **2013**, pursuant to Water Code section 85306, the Council adopted Risk Reduction Policy RR P1, which provides interim priorities to guide discretionary investments in Delta levee operation, maintenance, and improvements.
- Key priorities for interim funding include emergency preparedness, response and recovery, localized flood protection, protection of the levee network, and ecosystem conservation.
- The current priorities are meant to guide budget and funding allocations. RR P1 states that the goals are all important, and their achievement is expected to be balanced over time.

THE DELTA LEVEES INVESTMENT STRATEGY

DLIS Amendment Timeline



PROPOSED REGULATORY AM ENDMENTS

What Would DLIS Do?

The proposed DLIS regulations would set priorities for levee improvement funding and establish requirements for DWR to report to the Council and the public regarding where and why Delta levee investments are made.

- increases transparency, and
- informs decision-makers about how strategic investments in Delta levees can reduce risk to State interests over time.



How Would DLIS Work?

2013 Interim Priorities

- Priorities cover Delta flood risk management, including levee operations, maintenance, and improvements
- All tiers equally important
- Investments balanced over time

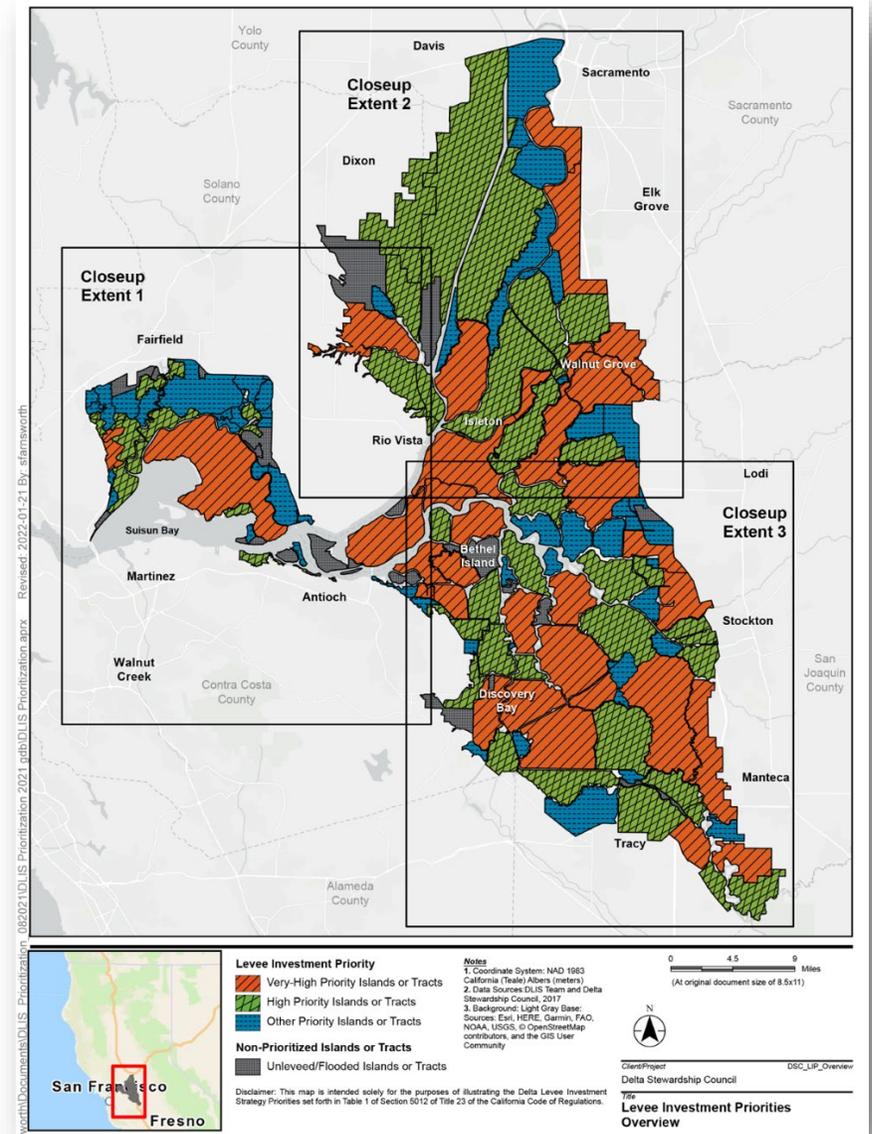
Proposed Updates

- Risk-based tiers for levee improvements
- O&M a priority throughout the system
- Annual DWR report to Council
 - O&M throughout the system
 - Improvements by risk tier



DLIS Priorities for Delta Islands and Tracts

- Very-High Priority, High Priority, Other Priority tiers
- Priority tiers apply only to levee *improvements*
 - *Maintenance and operations* are system-wide priorities
- Updated risk analysis shows that improvements in levees can, and do, change DLIS priorities for Delta islands and tracts
- Delta levee improvements will continue to occur and will necessitate future DLIS updates

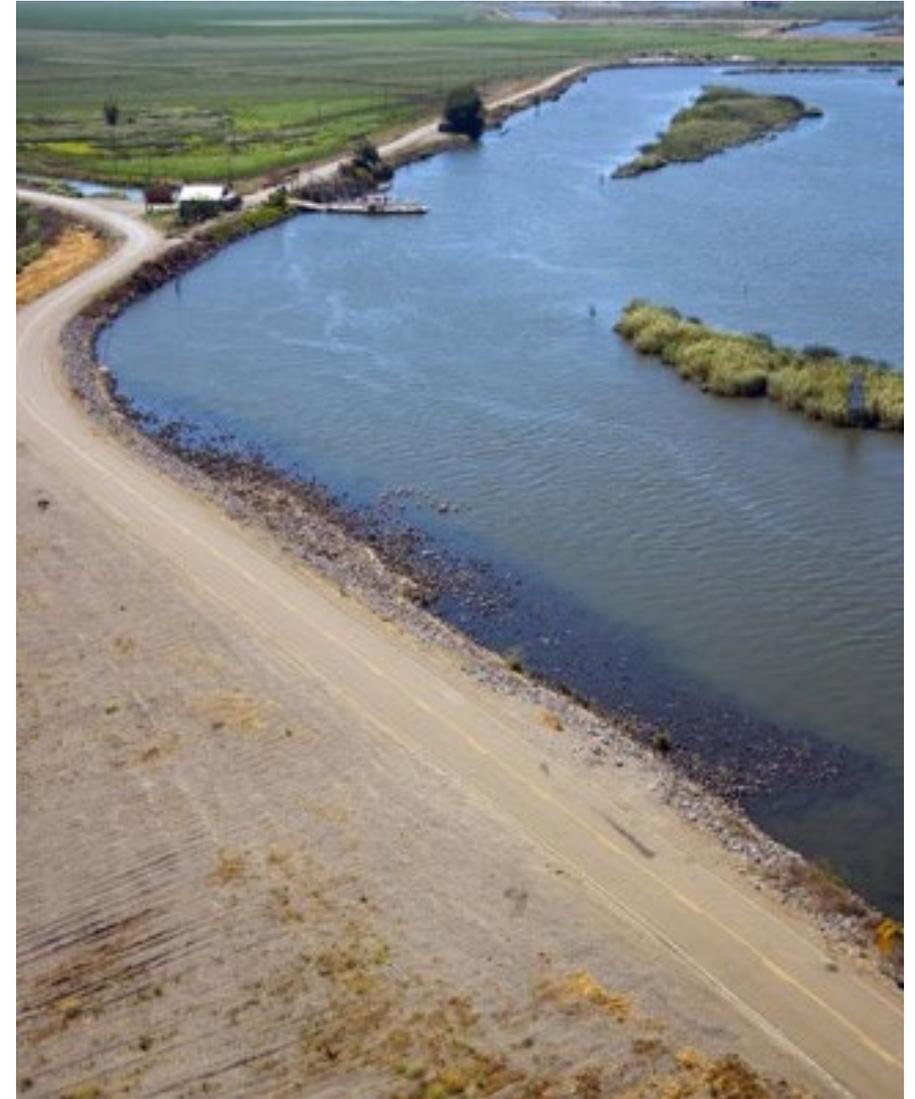


Proposed Regulatory Amendment to Section 5012 (RR P1)

- The proposed amendment to **Section 5012** would assign a DLIS priority of Very-High Priority, High Priority, or Other Priority to each Delta island or tract
- The proposed amendment would require DWR to annually submit to the Council a written report including certain information that identifies its decisions to award State funds for Delta levee *operations, maintenance, and improvement* projects
 - For *levee improvement* projects, report must identify how spending aligns with DLIS priorities, and/or describe how variance from the priorities nevertheless protects life, property, and state interests in the Delta

Proposed Regulatory Amendment to Section 5001

- The purpose of the proposed amendment to **Section 5001** would add definitions for five new terms used in the proposed amendment to Section 5012:
 - *Levee operation and maintenance*
 - *Levee improvement*
 - *Very-High Priority islands or tracts*
 - *High Priority islands or tracts*
 - *Other Priority islands or tracts*



ISOR: Objectives of the Proposed Amendments

- Setting **priorities for strategic Delta levee investments** that maximize the protection of people, property, and State interests
- Ensuring that the State **first invests public resources in Delta levees with the greatest potential to protect people, property, and State interests**, before investing public resources in Delta levees with lower potential to achieve these objectives
- Increasing public **awareness of how State expenditures maximize public safety** and protect State interests in the Delta

ISOR: Anticipated Benefits of the Proposed Amendments

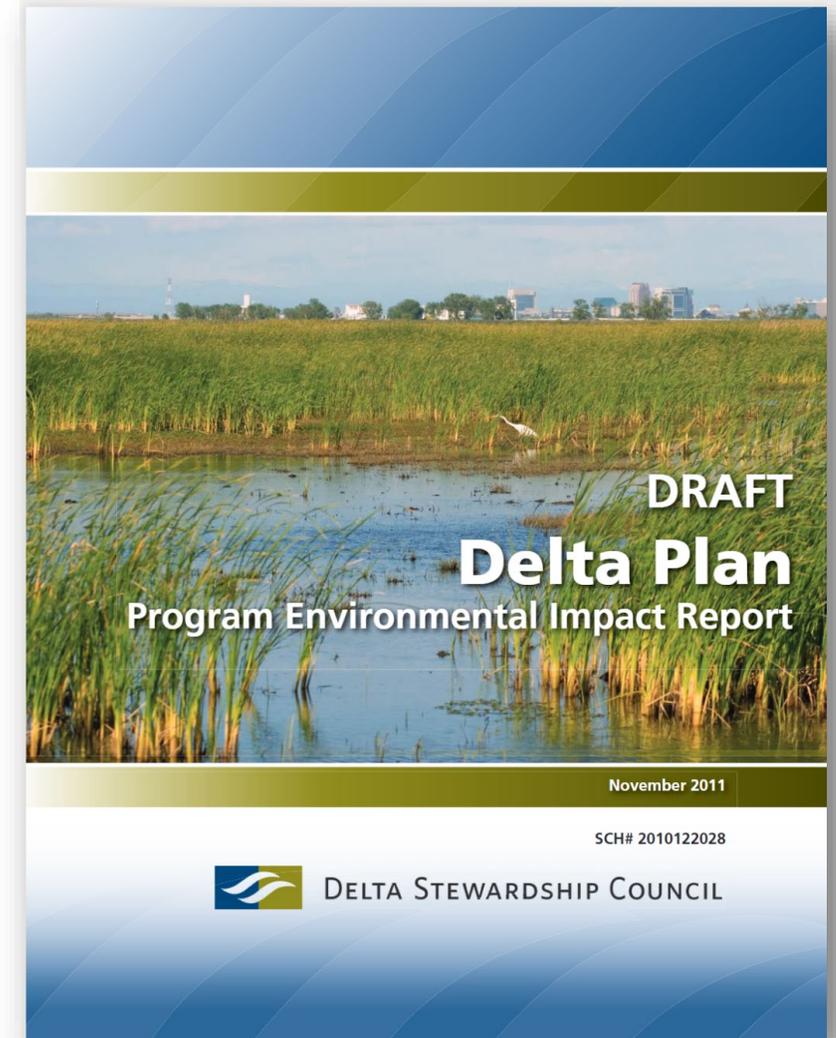
- **Reduced risk of damage to property and infrastructure**, including the reduced cost to repair failed levees
- **Reduced annual risk of fatalities** from a levee failure
- **Increased workers' safety** by prioritizing the islands and tracts with the largest in-Delta workforce
- **Increased State water supply reliability**
- **Increased protection** for cultural, recreational, natural resource, and agricultural qualities that distinguish the **Delta as Place**
- **Improved transparency and public awareness** of State levee funding decisions
- **Protected** high-value non-tidal **habitat**

ISOR: Fiscal and Economic Impacts

- **Costs to DWR** to prepare and submit an annual report to the Council
- The moderate additional annual costs of preparing and reviewing the annual report would likely be **absorbed within existing budgets**
- No costs to, or mandates on, **local agencies or school districts**
- No nondiscretionary costs or savings to **State or local agencies**
- Negligible impacts on **creation or elimination of jobs**
- Negligible impacts on the **creation of new businesses or elimination of existing businesses**
- No significant statewide adverse economic impact directly affecting **business, including ability to compete**
- Overall, **negligible economic impact** because while the amendment could affect the timing and distribution of investment, it would not change overall level of funding

California Environmental Quality Act

- In April **2018**, the Council adopted Resolution 2018-01 certifying the 2018 Delta Plan Amendments Program Environmental Impact Report (PEIR)
 - PEIR included an analysis of proposed DLIS priorities that were subsequently adjusted based on new information from additional data
- In August **2021**, the Council adopted Resolution 2021-02 certifying a PEIR Addendum to the 2018 Delta Plan Amendments PEIR and approving the proposed DLIS priorities as amendments to Delta Plan Policy RR P1 for purposes of rulemaking



RULEMAKING PROCESS

Rulemaking Steps

Notice of Proposed Rulemaking

- Filed the Notice of Proposed Rulemaking, which was published in the California Regulatory Notice Register on August 26, **2022**
- Filed a Notice of Extension of Written Comment Period and Rescheduled Hearing, which was published in the California Regulatory Notice Register on September 23, **2022**
- The extended written public comment period ended at 11:59 pm on November 16, **2022**

Remaining Rulemaking Steps

- Post comment letters received on the Council's DLIS webpage
- Prepare written responses to oral and written comments to include in the Final Statement of Reasons
- Present the Final Statement of Reasons along with other applicable rulemaking documentation for possible adoption by the Council at a future meeting
- If Council adopts at a future meeting, prepare final rulemaking packet for submittal to Office of Administrative Law (OAL)
- Regulation takes effect following OAL review and approval

STAFF

RECOMMENDATION

Requested Action

Staff recommends that the Council adopt **Resolution 2022-08**, which would authorize and direct the Executive Officer, or designee(s), to:

- (1) prepare written responses** to the public comments received by the Council on the Proposed DLIS Rulemaking; and
- (2) prepare other pertinent documents**, including a Final Statement of Reasons(FSOR); and
- (3) incorporate changes** to the Proposed DLIS Rulemaking identified by the Council at the November 17, 2022, public hearing and that Council staff recommend or may be in response to public comments received on the Proposed DLIS Rulemaking; and
- (4) make non-substantive changes** to the Proposed DLIS Rulemaking as necessary to effect the intent of the Resolution; and
- (5) return to the Council** at a future meeting to present the Proposed DLIS Rulemaking, including any such changes, and the related pertinent documents, including the FSOR, to the Council for consideration and possible adoption.

PUBLIC HEARING

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Operations



Maintenance



Improvements



2013 DLIS Priorities

Operations



Maintenance



Improvements



2022 DLIS Priorities

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