

**State of California
Delta Stewardship Council
California Code of Regulations, Title 23. Water Division 6.
Delta Stewardship Council
Chapter 2. Consistency with Regulatory Policies Contained
in the Delta Plan
Article 1. Definitions, Section 5001. Definitions
and
Article 3. Consistency with the Regulatory Policies Contained
in the Delta Plan, Section 5012. Prioritization of State
Investments in Delta Levees and Risk Reduction**

Draft Final Statement of Reasons

Introduction

Following a duly noticed February 23, 2023, public meeting, the Delta Stewardship Council (Council) approved for adoption proposed amendments to California Code of Regulations, Title 23, section 5012 (“Section 5012”) *Prioritization of State Investments in Delta Levees and Risk Reduction* to incorporate the Delta Levees Investment Strategy (DLIS) and California Code of Regulations, title 23, section 5001, (“Section 5001”) *Definitions* to add definitions for terms used in California Code of Regulations, title 23, section 5012 (proposed regulation).

The purpose of the amendments to sections 5001 and 5012 is to implement, interpret, and make specific provisions of the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) (Delta Reform Act). More specifically, Water Code section 85306 requires the Council to recommend priorities for State investments in Delta levee operation, maintenance, and improvements to reduce the likelihood and consequences of levee failures and to protect people, property, and State interests while advancing the coequal goals of improving water supply reliability, restoring the Delta ecosystem, and protecting and enhancing the values of the Delta as an evolving place. (See *also* 85020, 85022, 85054, 85057.5, 85225, 85300, 85305, 85306, 85307, and 85309 of the Water Code.)

Update of Initial Statement of Reasons

On August 26, 2022, the Council initiated the formal rulemaking process by issuing a Notice of Proposed Rulemaking to provide notice and receive public comments on the proposed regulation (OAL File No. Z2022-0816). The text of the proposed regulation, an Initial Statement of Reasons (ISOR), and an Economic and Fiscal Analysis (EFIA) of the proposed regulation were made available for public review and comment starting August 26, 2022, and ending November 21, 2023, following a requested and granted extension. The ISOR describes the rationale for the proposed regulation and

is included in Tab C of the rulemaking record. On September 23, 2022, a Notice of Extension of Written Comment Period and Rescheduled Hearing was published (OAL File NO. Z2022-0909-01) due to the Council inadvertently filing an incorrect version of the proposed regulation text in August 2022.

The Council held a duly noticed public hearing to hear public comments on November 17, 2022, at the California Natural Resources Building at 715 P Street, Sacramento.

Following the November 17, 2022, public hearing, modifications were made to the proposed regulation, described in detail below, and the footnotes were added in the economic and fiscal analysis attached to the ISOR. An additional 25-day comment period to receive public comments on these changes began December 15, 2022, and closed on January 9, 2023.

The Council was made aware through public comments that the EFIA attached to the ISOR had 15 inadvertently omitted footnotes, despite all references being listed at the end of the document. A modification was made to include the footnotes left out of the original EFIA, and a corrected version was made available during the December 15, 2022, through January 9, 2023, comment period.

Proposed Regulation and Modifications to the Proposed Regulation

The proposed amendments to sections 5001 and 5012 are provided under Tab F of the rulemaking file. In the final proposed text (Tab F), initial proposed amendments are shown in underline to indicate additions and shown ~~in strikeout~~ to indicate deletions relative to the existing regulations. Additional changes described above that were made after the public comment period and November 17, 2022, public hearing are shown as deletions ~~in double strikethrough~~ and additions in double underline.

After the November 17, 2022, public hearing, the following modifications were made to the proposed regulation:

Section 5001, subd. (w), definition of “Levee improvement.”

Reason for modification: The definition of “Levee improvement” in Section 5001, subd. (w), was modified in response to public comments to clarify what activities are included in levee improvements that would be prioritized within the DLIS. The Council received several comments about the need to restore levees to their previous condition after settlement or deterioration; the Council does not consider this activity to be an improvement.

The modification was made to Section 5001, subd. (w), after the November 17, 2022, hearing as follows (shown in double strikeout):

“Levee improvement” means any activity that is not levee operation and maintenance, and that is intended to reduce the probability of flooding or the addition of a feature that did not previously exist. Examples of levee improvements include changing levee

geometry to reach a higher level of protection, ~~increasing the height of a levee,~~ providing riprap where none previously existed, and other similar activities.

Section 5012, subd. (c)(1)

Reason for modification: Section 5012, subd. (c)(1), was modified in response to comments to specify a date by which the annual levee investment report prepared by the Department of Water Resources (DWR) would be submitted to the Council. The Council believes it would add clarity to the reporting process and predictability for interested parties.

The modification was made to Section 5012, subd. (c)(1), after the November 17, 2022, hearing as follows (shown in double underline):

(1) The California Department of Water Resources shall submit a written annual report to the Council, as well as present the report to the Council, on State funds distributed or provided by the California Department of Water Resources for levee operation, maintenance, repair, rehabilitation, replacement, and improvement projects within the legal Delta. At least 45 days prior to the oral presentation before the Council, and no later than March 1 of each calendar year, the California Department of Water Resources shall submit the written annual report to the Council and make the report publicly available.

Local Mandate Determination

The proposed regulations do not impose a mandate on local agencies.

Summary and Responses to Comments Received During 45-Day and 15-Day Comment Periods

**California Code of Regulations, Title 23. Waters
Division 6. Delta Stewardship Council
Chapter 2. Consistency with Regulatory Policies Contained in the
Delta Plan
Article 1. Definitions, Section 5001. Definitions
and
Article 3. Consistency with the Regulatory Policies Contained in the
Delta Plan, Section 5012. Prioritization of State Investments in Delta
Levees and Risk Reduction
Summary and Responses to Oral and Written Comments Received**

from August 26, 2022, through January 9, 2023, including:

Oral and Written Comments

The Council solicited public comments on the proposed regulation package Z-2022-0816-07; a total of 22 written comments and 15 oral comments were received.

NOTE: The comments received were divided into individual sub-comments, which are each summarized and numbered in the matrix that is Attachment 1 to the Final Statement of Reasons (FSOR); the sub-comments were then grouped into categories based on similar topics or concerns. A brief summary of the comments by area of concern and the responses to the comments by area of concern are contained below; the corresponding sub-comments are identified at the end of each summary by the corresponding number in the matrix summary (Attachment 1 to the FSOR). Copies of the submitted written comments and the comment portion of the transcript of the November 17, 2022, public hearing are contained in Tab D of the rulemaking record; they are marked with brackets that identify the corresponding comment number in the comment summary matrix (Attachment 1 to the FSOR).

The public comment period for this proposed regulatory action began on August 26, 2022, with the publication in the California Regulatory Notice Register (OAL File Number Z-2022-0816-07 (this is the file number that will be used for the submittal of the rulemaking file)). The notice announced a public review period from August 26, 2022, through October 13, 2022. An incorrect version of the regulatory language was inadvertently filed and, therefore, a notice of an extension of the comment period and rescheduled hearing was published on September 23, 2022. The comment period was extended to November 16, 2022, and the public hearing on the proposed rulemaking was rescheduled to November 17, 2022. At the November 17, 2022, public hearing, the Council further extended the public comment period through November 21, 2022.

The November 17, 2022, public hearing was held in-person at 715 P Street, Sacramento, California, 95814 and also virtually in accordance with the requirements set forth in Government Code section 11346.8.

Following the November 17, 2022, public hearing and the receipt of public comments during the 45-day comment period, modifications were made to the text of the proposed regulations. These changes are identified in ~~double strikethrough~~ to indicate deletion and double underline to indicate addition in the final proposed regulatory language that is in Tab F. The comment period for these changes was December 15, 2022, through January 9, 2023.

The tables below list commenters who provided written and/or oral comments on the proposed regulations during the designated comment periods. The number associated with a specific commenter(s) in the comment summaries and responses sections that follow correspond to the numbers assigned to the commenter(s) in the tables below.

Table 1: Commenters Who Provided Written and/or Oral Comments during the Comment Period from August 26, 2022, through November 21, 2022

Number	Name	Affiliation
1	C.D. Van Loben Sels	Reclamation District 551
2	Melinda Terry	Central Valley Flood Control Association
3	Alan Coon	Reclamation District No. 2029
4	Thomas Slater	Reclamation District No. 999
5	Alan Coon	Reclamation District 2037
6	Alan Coon	Reclamation District No. 2044
7	Dominick Gulli	Green Mountain Engineering
8	Osha Meserve	Local Agencies of the North Delta
9	Dante Nomellini	Central Delta Water Agency
10	Don Nottoli	Delta Protection Commission
11	M. Terry, D. Nomellini Sr., J. Herrick, O. Meserve	Local Agencies of the North Delta
12	Michael Moncrief	MBK Engineers
13	Dante Nomellini Jr.	Central Delta Water Agency
14	Gilbert Cosio Jr.	River Delta Consulting
15	Dominick Gulli	Green Mountain Engineering
16.1	Brett Baker	Reclamation District 2023
16.2	Dante Nomellini Sr.	Central Delta Water Agency
16.3	Dominick Gulli	Green Mountain Engineering
16.4	Bryan Brock	Department of Water Resource
16.5	Randy Fiorini	Landowner/Farmer
16.6	Gilbert Cosio Jr.	River Delta Consulting
16.7	Tom Slater	Reclamation District 999
16.8	Kirsten Pringle	Delta Protection Commission
16.9	Emily Pappalardo	MBK Engineers
16.10	Tom Zuckerman	Landowner
16.11	Dante Nomellini Jr.	Central Delta Water Agency
16.12	Osha Meserve	Local Agencies of the North Delta
16.13	Melinda Terry	Central Valley Flood Control Association

Table 2: Commenters Who Provided Written and/or Oral Comments During the Comment Period from December 15, 2022, through January 9, 2023

Number	Name	Affiliation
17	Melinda Terry, Dante Nomellini Sr., John Herrick, Osha Meserve	Central Valley Flood Control Association & Local Agencies of the North Delta
18	Gilbert Cosio Jr.	River Delta Consulting

19	Kirsten Pringle	Delta Protection Commission
20	Dante Nomellini Sr.	Central Delta Water Agency
21	Brett Baker	Reclamation District 2023
22	Emily Pappalardo	MBK Engineering
23	Alf Brandt	General Counsel, Assembly Speaker Anthony Rendon
24	Dante Nomellini Sr.	Central Delta Water Agency
25	Brett Baker	Reclamation District 2023

Responses to Oral and Written Comments

Response 1: Interference with Federal Participation

Summary of Comments Received

Several comments were made about the potential for the regulation to interfere with the ability to secure federal funds after a high-water event. Some commenters expressed a concern that the proposed regulation may have the unintended result of discouraging disaster assistance in levees on many islands and tracts or stated that the regulation needs to ensure that it does not interfere with the ability of maintaining agencies to participate in federal programs. Others said that reducing potential liability for project levee failures should be incorporated into the State interests considered in the prioritization, while others said that the prioritization is missing the State interest of maintaining a good standing in the Army Corps of Engineers PL 84-99 program, which pays 100 percent of repair costs if a levee is damaged. [Comments 2.2, 2.7, 2.8, 8.3,8.7, 9.19, 16.2.11, 16.7.25, 16.13.68, 16.13.72, 19.1, 20.1, and 22.1]

Response to Comments Received

Response 1: Response to Comments Concerning Interference with Federal Participation

No action taken in response to these comments.

Currently, there are two major federal programs that assist with levee improvement, repair, and flood recovery. These are administered by the U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA). As a general rule, levees that are a part of the State Plan of Flood Control (Project Levees) are part of the federal system of flood control fall under the jurisdiction of USACE. Local levees that are not part of this system (non-Project Levees) are eligible for assistance through FEMA.

USACE's Rehabilitation and Inspection Program under Public Law 84-99 (PL 84-99 Rehabilitation Program) provides reimbursement for specific damages to levees that result from high-water events. To be eligible, the levee sponsor must be enrolled in the

PL 84-99 Rehabilitation Program and provide levee maintenance to a standard level that is acceptable to USACE. Participation in this program may entitle the levee sponsor to post-damage assistance. Only projects that are in good standing with the PL 84-99 Rehabilitation Program and have a benefit to cost ratio greater than 1.0 are eligible for this assistance, regardless of their active status in the program.

FEMA disaster assistance is provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5207) (the Stafford Act). After a major flood event, the governor may request federal disaster relief. Once the request has been made, State and federal officials conduct a joint federal, state, and local Preliminary Damage Assessment (PDA) to determine the extent of the disaster and its impact on individuals and public facilities. This information is included in the governor's request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the local governments, and that supplemental federal assistance is necessary. Currently, there are no clearly defined criteria to receive this assistance.

Reducing risk to the State by engaging with the federal government in disaster relief is a priority. The Council supports funding the activities necessary to achieve, or remain in, good standing with the USACE's PL 84-99 Rehabilitation Program for Project Levees. The proposed regulation explicitly states:

(1) For project levees, funding should be prioritized to ensure levees are operated and maintained in accordance with Code of Federal Regulations, Title 33, Part 208.10, applicable federal Operation and Maintenance manuals, active in federal Public Law 84-99 Rehabilitation Program, and consistent with Central Valley Flood Protection Board Resolution No. 2018-06 for Acceptable Operation and Maintenance of the State Plan of Flood Control (emphasis added).

The proposed regulation would not interfere with a local levee sponsor's ability to participate in the PL 84-99 Rehabilitation Program.

There are no clearly defined criteria to receive assistance from FEMA under the Stafford Act. As such, the proposed regulation would not interfere with individuals or public agencies requesting to access assistance in the event of a disaster declaration.

Response 2: Definitions and Alignment of Definitions with Objectives and Other Programs

Summary of Comments Received

Several comments were made regarding the adequacy or scope of the proposed definitions, and the proposed definitions' impact on maintaining agencies' ability to participate in State funding programs. Some commentors requested that the phrase "increasing the height of a levee," be excluded from the proposed definition of Levee Improvement. Others requested that the proposed definition for **Levee Operations and Maintenance** be altered to remove the phrases "*retain or*" and "*but does not include any significant excavation or any excavation during the flood season*" and to include the phrase "*This also includes crown and slope repairs to reestablish the existing level of flood protection after damage due to storms or encroachments or levee settlement.*" Others spoke more generally to the need to include rehabilitation in

the definition for Levee Operation and Maintenance because levees are known to settle, which requires raising levee crowns or repairing slopes to retain the previous level of flood protection.

Other commentors requested that the definition of **Levee Improvement** be changed to mean *“any activity that is not ‘Levee operation, maintenance, repair, rehabilitation and replacement’, and that is intended to reduce the probability of flooding to facilitate change in land use or the addition of a feature that did not previously exist.”*

Commentors requested that the definition of **Levee Operations and Maintenance** be changed to *“‘Levee operation, maintenance, repair, rehabilitation and replacement’ which means levee work intended to preserve the Delta levee system and the Delta’s physical characteristics in essentially their then present form.”*

Some commentors expressed concern that proposed definitions could modify the Delta Levee Maintenance Subventions Program (Subventions Program), a program that provides funding on a cost-share basis to local levee maintaining agencies for the rehabilitation and maintenance of levees in the Delta. These comments express a concern that the definitions do not support the Subventions Program. One commenter stated that the proposed language in section 5001 could modify the Subventions Program as it currently exists and limit funding opportunities for all Districts to perform the necessary maintenance and rehabilitation of their levee systems, and that the proposed definitions do not support the Subventions Program - a program that already has priorities and structure to balance funding universally in the Delta. Commentors stated that any proposed rulemaking should align with existing legislation and programs. Other commentors expressed that, in their opinion, the definitions do not conform with current programs and practices in the Delta.

[Comments 1.1, 1.3, 1.4, 1.5, 2.3, 2.6, 2.7, 3.1, 3.2, 3.3, 3.4, 3.5, 4.2, 4.3, 4.4, 4.5, 5.2, 5.3, 5.4, 5.5, 6.2, 6.3, 6.4, 6.5, 6.6, 8.4, 8.5, 8.12, 9.8, 9.9, 10.3, 10.4, 16.2.10, 16.6.18, 16.7.26, 16.9.34, 16.9.35, 16.9.36, 16.12.60, 16.13.73, 17.1, 18.1, 19.1, and 22.2]

Response to Comments Received

Response 2.0: Response to Comments Received Concerning Definitions and Alignment of Definitions with Objectives and Other Programs

No action taken. Section 85305 of the Sacramento San-Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) (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.” (Wat. Code, § 85305, subd. (a).) The Delta Reform Act further requires that the Council, in consultation with the Central Valley Flood Protection Board (CVFPB), “recommend in the Delta Plan priorities for state ***investments 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.” (Wat. Code, § 85306. ***Emphasis added.***)

The proposed prioritization is not directed at specific programs or funding sources. The Delta Reform Act does not prescribe the methodology for the Council to determine the priorities for state investments in Delta levees nor does it direct the Council to consider funding sources in its

analysis. Rather, the Delta Reform Act does direct the prioritization of investments for both project and nonproject levees. The proposed Delta Levees Investment Strategy (DLIS) prioritization is based on the risk to state interests, regardless of which program funds the investments and regardless of whether a levee is a project or nonproject levee. In this way, the same criteria for prioritization can be applied across multiple programs, which creates a level playing field for all State interests considered. Thus, the proposed regulation intends to track *all* discretionary State levee spending in the Delta, regardless of which program provides the funding. The proposed reporting requirement for the Department of Water Resources (DWR) does not specify which programs to include in its reporting, but rather requires DWR to explain the variations in funding for levee improvements relative to the recommended priorities. Consequently, the Council's expectation is that DWR would report on all discretionary funding decisions.

Response 2.1: Comments regarding definitions of levee improvement, levee operation and maintenance

No action taken. Commenters suggest that the definitions proposed for levee operations and maintenance and levee improvement in the proposed regulation are inconsistent with existing procedures and programs, such as DWR's Subventions Program and Special Projects Program and the Central Valley Flood Protection Board's (CVFPB) state priorities for project levees. Some comments state that the proposed definitions for "levee improvement" and "levee operation and maintenance" are not aligned with DWR's Delta levee programs, and some requested that the definition of "levee operations and maintenance" be expanded to include "rehabilitation."

Unfortunately, definitions are not consistent across existing programs. The Council's proposed definitions for "levee operations and maintenance" and "levee improvement" were developed to align with CVFPB's definition of maintenance activities in California Code of Regulations, title 23, section 4(v), definitions in federal regulations (33 C.F.R. § 208.10), the Water Code, and CVFPB's Resolution No. 2018-06 (defining repair, rehabilitation, and replacement as independent of operations and maintenance).

Commenters suggested that the proposed regulation is inconsistent with existing procedures and programs, such as CVFPB's state priorities for project levees. Section 5012, subsection (a), includes levee operation and maintenance as a priority, consistent with CVFPB's Resolution No. 2018-06 and Water Code section 12981.

[Comments 1.1, 1.3, 1.4, 1.5, 2.3, 2.6, 2.7, 3.1, 3.2, 3.3, 3.4, 3.5, 4.2, 4.3, 4.4, 4.5, 5.2, 5.3, 5.4, 5.5, 6.2, 6.3, 6.4, 6.5, 6.6, 8.4, 9.7, 9.8, 9.9, 10.3, 10.4, 16.2.10, 16.6.18, 16.7.26, 16.9.34, 16.9.35, 16.9.36, 16.9.37, 16.12.60, and 16.13.73]

Response 2.2: Comments Requesting Amending "Improvement" Definition to Exclude Increasing Levee Height

The Council responded to this comment by making changes to the proposed definition of "levee improvement." Commenters expressed concern about including "increasing the height of a levee" in the definition of "levee improvement" because over time, levees can settle or subside, requiring fill placement to maintain the levee's prior level of protection.

The proposed definition of Levee Improvement was:

“Levee improvement” means any activity that is not levee operation and maintenance, and that is intended to reduce the probability of flooding or the addition of a feature that did not previously exist. Examples of levee improvements include changing levee geometry to reach a higher level of protection, increasing the height of a levee, providing riprap where none previously existed, and other similar activities.

The Council does not consider activities undertaken to maintain or restore a levee’s level of protection to be an improvement. In response to this comment, the Council proposed modifications to proposed definition of “levee improvement” (proposed section 5001, subsection (w)) as follows:

“Levee improvement” means any activity that is not levee operation and maintenance, and that is intended to reduce the probability of flooding or the addition of a feature that did not previously exist. Examples of levee improvements include changing levee geometry to reach a higher level of protection, ~~increasing the height of a levee,~~ providing riprap where none previously existed, and other similar activities.

[Comments 1.2, 1.3, 2.3, 2.6, 3.2, 4.2, 5.2, 6.2, and 8.4]

Response 2.3: Comments regarding adding Rehabilitation to the Definition of “Levee Operation and Maintenance.”

No action taken. The Council has worked extensively with the CVFPB to align the proposed definitions for “levee improvement, operation and maintenance” with existing federal and state laws and guidance. Rehabilitation is not included in these definitions. To maintain alignment with the various definitions, the Council is not proposing to add rehabilitation activities to the definition of “operation and maintenance.”

No changes to the ISOR or economic and fiscal analysis are proposed in response to these comments. No further changes to the proposed regulations are proposed.

[Commenters 1.3, 1.4, 2.7, 3.3, 3.4, 4.3, 4.4, 5.3, 5.4, 6.3, 6.4, 6.5, 8.4, 9.7, 9.8, 9.9, 10.3, 10.4, 16.2.10, 16.6.18, 16.7.26, 16.9.34, 16.9.37, 16.12.60, and 16.13.73]

Response 3: Comments Requesting Suspension or End of Rulemaking Process and Additional Coordination with Stakeholders

Summary of Comments Received

The Council received comments requesting additional stakeholder engagement, including pausing the process, allowing additional engagement not required by the Administrative Procedure Act (Gov. Code, § 11340 et seq.), or ending the rulemaking process altogether. Several commenters requested that the Rulemaking process be put on hold to allow additional time for Council staff to participate in levee tours to better understand the system and coordinate on language and definitions of the proposed regulations. One commenter requested that interested parties be allowed to rebut or supplement and review other comments of interested parties in writing prior to the Council taking action on the rulemaking. Several commenters requested that the

rulemaking process be discontinued altogether, saying a regulatory approach is unnecessary as the Council's recommendations carry enough weight.

[Comments 1.7, 2.1, 3.7, 4.8, 5.7, 6.8, 7.4, 8.1, 8.15, 9.1, 11.1 11.2, 16.1.2, 16.1.3, 16.2.6, 16.7.28, 16.9.39, 16.10.43, 16.11.53, 16.11.54, 16.12.55, 16.12.56, 16.12.65, 16.13.66, 17.2, 17.3, 17.4, 19.4, 20.1, 20.2, 20.5, 21.2, 21.3, 22.3, 24, 25]

Response to Comments Received

Response 3: Comments Received Requesting Suspension or End of Rulemaking Process and Additional Coordination with Stakeholders

No action taken, and the Council disagrees, in part. At its August 26, 2021, Council meeting, the Council adopted Resolution 2021-02, directing staff to initiate this proposed rulemaking. The Council has conducted extensive outreach and coordination with stakeholders during the development of this DLIS rulemaking, providing many opportunities for public input. Prior to the initiation of this rulemaking, the Council set up a website dedicated to DLIS, which has been updated regularly. Development of the DLIS has been an open and transparent process that allowed numerous opportunities for public and stakeholder involvement. In addition to the independent peer review panel, the Council deployed an extensive public engagement process to support development of the DLIS methodology. The proposed regulatory amendment was developed over an approximately six-year period in collaboration with State agencies, local reclamation districts, Delta landowners and businesses, and other stakeholders, and is based on the best available existing data and lessons learned from other State and local programs and planning efforts. During the development of DLIS and the regulatory language, Council staff hosted over 70 workshops and public meetings with Delta residents, reclamation district engineers, water supply and ecosystem interests, and other Delta stakeholders. Overall, the development of the DLIS was discussed at over 47 Council meetings. This includes Council hosted expert panel discussions at Council meetings and public meetings in locations throughout the Delta. These public meetings included outreach listening sessions, technical outreach, and presentations with agencies and organizations. The proposed regulation was developed in transparent interactions and with stakeholder participation at public information workshops that were held on December 8, 2014, in Clarksburg; January 5, 2015, in Brentwood; March 11, 2015, in Sacramento; April 27, 2015, in Stockton; April 29, 2015, in Walnut Grove; and May 19-20, 2015, in Sacramento, with an additional three meetings during that time dedicated to levee geometry and condition. (For further details on coordination and methodology, see Response 5. Comments Concerning DLIS Methodology section below)

The Council reviewed definitions used by the various State and federal levee programs in the Delta and found definitions are not consistent across the programs. The Council's proposed definitions for levee operations and maintenance, and levee improvement were developed to align with the California Code of Regulations, title 23, section 4(v), the definitions in federal regulations (33 C.F.R. § 208.10) and the Water Code, and CVFPB's Resolution No. 2018-06 (defining repair, rehabilitation, and

replacement as independent of operations and maintenance). (See also, Response 2: Definitions, and Alignment of Definitions with Objectives and Other Programs, including Responses 2.1, 2.2 and 2.3 above)

In addition, the Council provided public engagement on the proposed rulemaking as required by the Administrative Procedure Act in the form of: a) a public comment period on the initial proposed regulation from August 26, 2022, through November 21, 2022, (this includes a republication of corrected language on September 20, 2022); b) a public hearing on November 17, 2022; and 3) a public comment period from December 15, 2022, through January 9, 2023, on changes made after the public comment period ending on November 21, 2022. During the first comment period, a request was made for DLIS to be put on the December 2022 Council Meeting agenda [Comment 11.2], which the Council did, giving an update and allowing further public comment consistent with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) (Bagley-Keene).

The Council is responding to comments in writing, as required pursuant to the Administrative Procedure Act [Comment 7.4]. Written comments are part of the rulemaking file, and responses are included in the FSOR. Documents related to the DLIS rulemaking that are not available on the Council's website have been available upon request, which could be sent to an email address posted on the website. No rebuttal or supplementation period is required by the Administrative Procedure Act, although opportunity for public comment is provided pursuant to Bagley-Keene at Council meetings either on the specific agenda item or on matters not listed on the agenda in the general public comment agenda item. Any member of the public may provide comments to the Council at any time. However, the Council will not be responding to public comments as part of the rulemaking process that are received after the January 9, 2023, public comment deadline.

No changes to the proposed regulations, ISOR, or economic and fiscal analysis are proposed in response to these comments.

Response 4: Comments regarding Consistency with Existing Law and Authority

Summary of Comments Received

The Council received comments on consistency with existing law and authority. Some commenters questioned whether the proposed regulation was consistent with certain statutes and regulations. Some commenters claimed that the proposed regulations are beyond the authority of the Council in Water Code section 85306 because it requires the Council, in consultation with the CVFPB, to “recommend in the Delta Plan priorities for state investments 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.” (Wat. Code, § 85306.)

[Comments 8.9, 8.10, 8.12, 9.9, 9.11, 9.12, 9.17, 13.1, 13.2, 13.3, 15.1, 15.2, 16.3.12, 16.10.40, 16.10.44, 23 and 25]

Response to Comments Received

Response 4.1: Comments regarding the Council's Authority to Regulate in this Area.

No action taken. The Council disagrees, in part. Some commenters claim that the word “recommend” in Water Code section 85306 only authorizes the Council to implement non-regulatory measures and does not authorize the Council to adopt the proposed DLIS regulation. Some commenters agree that the Court of Appeal has held that “promote” can be satisfied either by regulation or a recommendation. Some commenters also agree that Water Code section 85305 grants the Council the authority to adopt regulations regarding “strategic levee investments.” Some commenters state that the use of the word “promote” in other sections of the Delta Reform Act (such as Water Code sections 85303, 85304, and 85305) indicates that “recommend” cannot be interpreted to mean “regulate” and that the use of the word “recommend” in Water Code section 85306 does not authorize the Council to regulate Delta Levee investment priorities. Some commenters also state that a more specific statute governs over a more general statute. These commenters state that Water Code section 85306 is more specific and, thus, trumps the general provisions of Water Code section 85305. Therefore, according to commenters’ desired interpretation of these sections and the word “recommend,” Water Code section 85306 does not authorize the Council to regulate in this area. The Council has statutory authority to adopt the proposed regulation and disagrees with the commenters’ interpretation of Water Code section 85306.

In developing the bill that would become the Delta Reform Act, initial bill language would have required the Council to “set” priorities for the State’s Delta levee investments. In Assembly-Senate discussion, Senate staff expressed concern that the Legislature held the sole prerogative to set budget priorities. Consequently, the final bill language required the Council to “recommend” priorities. (See comment letter #23 provided by Alf W. Brandt.) As explained in the Assembly floor analysis for the Delta Reform Act, the combination of the Council’s authority to recommend priorities and enforce the Delta Plan gives the Council authority to establish Delta levee investment priorities, in the absence of the Legislature imposing priorities. According to the legislative history of sections 85305 and 85306, the Legislature intended these two provisions to work in tandem with section 85001, subdivision (c), as follows:

Levees/Flood Protection:***The Delta Plan will include recommendations for priorities for state investments in levees. These recommendations, in combination with the Council’s authority to ensure that state agencies act consistently with the Delta Plan, will ensure that levee spending by DWR and the Central Valley Flood Protection Board (CVFPB) reflects these priorities.***.... These priorities will affect both the Delta levee Subvention program (non-project levees) and the Special Projects program (levees with a State interest). (Senate Floor Analysis of Sen. Bill No. 1 X7 (2009-2010 7th Ex. Session) p. 13, passed as amended November 4, 2009. (***Emphasis added.***)

The Legislature created the Council as part of its intent “to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.” (Wat. Code, § 85001, subd. (c).) Water Code section 85300 provides the Council broad authority to “develop, adopt and commence implementation of the Delta Plan...that furthers the coequal goals.” (Wat. Code, § 85300, subd. (a).) Water Code section 85020, subdivision (g), identifies, as state policy, the objective to “reduce risks to people, property, and state interests in the Delta

by ... investments in flood protection” as inherent in the coequal goals for management of the Delta. (Wat. Code, § 85020, subd. (g).))

Water Code section 85210, subdivision (i), states that the Council has the power “to adopt regulations or guidelines as needed to carry out the powers and duties identified in [the Delta Reform Act].” After reviewing that provision and the rest of the Delta Reform Act, the Court of Appeal recently held:

Given the language in the [Delta Reform] Act, it is clear to us that the Legislature chose to grant the Council broad authority to apply its expertise in determining how to accomplish the Legislature’s goals and objectives, including whether to adopt performance measure targets as legally enforceable regulations. (*Delta Stewardship Council Cases [DSC Cases]* (2020) 48 1014, 1052); *see also id.* at p. 1070 [“discretion to adopt recommendations or regulations.”]

Water Code sections 85305 and 85306 provide authority for the Council to adopt the proposed DLIS regulation. Water Code section 85305 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***.” (Wat. Code, § 85305, subd. (a). Emphasis added.) As some commenters have also noted, the Court of Appeal has expressly determined, in reviewing another Delta Reform Act provision that uses the word “promote,” that the Legislature’s use of that word gives the Council the authority, in its discretion, to adopt a regulation. The Court reviewed Water Code section 85304’s provision that the Delta Plan “promote options” concerning water conveyance. The Court of Appeal rejected the contention that the word “promote” did not authorize regulations. Rather, the Court explained that “[t]he adoption of recommendations or regulations to satisfy the requirements in Water Code section 85304 fall within the definition of “promote.” (*DSC Cases* (2020) 48 Cal.App.5th 1014, 1070, fn. 26.)

The Legislature further required that the Council, in consultation with the CVFPB, “recommend in the Delta Plan priorities for state investments 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.” (Wat. Code, § 85306.) In addition, the Legislature is presumed to know the laws in existence when it adopts new legislation. The Legislature adopted Water Code section 12986, subdivision (c), after the Delta Reform Act (including Water Code section 85306) and indicated that the Council’s levee priorities be followed, stating:

Reimbursements [for Delta levees] made pursuant to this section shall reflect the priorities of, and be consistent with, the Delta Plan established pursuant to Chapter 1 (commencing with Section 85300) of Part 4 of Division 35.

Water Code section 85305 requires the Council to “promote ... strategic levee investments” and Water Code section 85306 requires the Council to “recommend in the Delta Plan priorities for state investments 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.” Water Code section 12986 reinforces the intention that the priorities set by the Council be mandatory and requires that reimbursements for Delta levees reflect and be consistent with the Delta levee investment priorities set by the Council.

“Further, there is no inconsistency between the possible interpretations of “promote” (or “promoting” as in Water Code section 85305) and “recommend” (used in Water Code section

85306) as meaning to “regulate.” Depending upon their context, the terms “recommend” and “recommendations” can be mandatory. (*Western Oil & Gas Ass'n v. Air Resources Board* (1984) 37 Cal.3d 502, 511 [“Words such as ‘recommends’ and ‘recommendations’ are used in the codes both in a mandatory and advisory sense, and the determination of the legislative intention depends upon the context in which the word is used.”].) When read in the context of the Council’s power to adopt regulations to carry out the powers and duties identified in the Delta Reform Act (Water Code section 85210(j)), the Court’s interpretation of the Legislature’s delegation of “broad authority” to the Council (*DSC Cases, supra*, 48 Cal.App.5th 1014, 1052 and 1070), the specific provisions in Water Code sections 85305 and 12986, subdivision (c), and legislative intent, the term “recommend” as used in Water Code section 85306 supports a regulatory approach.

The Legislature intended to give the Council the power to regulate Delta levee investment priorities by giving the Council specific authority and directive to “recommend in the Delta Plan priorities for state investments 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” (Wat. Code, § 85306) and promote strategic levee investments (Wat. Code, § 85305), in conjunction with the Legislative intent to “to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan” (Water Code section 85001(c)) and empowering the Council to “adopt regulations or guidelines as needed to carry out the powers and duties identified in the [Delta Reform Act]” (Wat. Code, § 85210, subd. (i)).

The proposed regulation also includes a reporting requirement, which is authorized under Water Code section 85210, subdivision (h), that states that the Council has the power “to request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.” The proposed regulation section 5012, subsection (c), would require DWR to submit a written report to the Council annually identifying its decisions to award State funds for Delta levee operation, maintenance, repair, rehabilitation, replacement and improvement projects within the legal Delta. The reporting requirements provide a means for the Council to track and ascertain if the DLIS priorities are achieving the intended purpose and to evaluate whether State investments in Delta levees comply with the DLIS priorities, Delta Plan, Delta Reform Act, and coequal goals.

The Council has the authority to adopt the proposed regulation.

[Comments 9.17, 13.1, 13.2, 13.3, 16.10.40, 16.10.44, 23, 25]

Response 4.2: Comments Regarding the Council’s compliance with the Office of Administrative Law Regulations

Summary of Comments Received

One commenter detailed the standards for authority and consistency under the Administrative Procedure Act and its regulations, stating that the proposed regulations do not meet the standards because the Council is exceeding its statutory authority and that the Council is required to recommend priorities, but does not have the authority to codify the proposed regulations. “The statutory direction to recommend priorities does not provide the Council with the authority to codify the proposed tiered priority matrix as a regulation.” The commenter further stated that the proposed regulation does not meet the California Code of Regulations standards for Authority, Consistency, and Clarity saying, “The statutory direction to recommend priorities does not provide the Council with the authority to codify the proposed tiered priority matrix as a regulation.” The same commenter pointed out that the Council should not limit

DWR's flexibility and expressed concerns that the prioritization may redirect funds from nonproject and nonurban areas within the Delta to fund urban projects that have other sources of funding.

The commenter also detailed the standards for clarity under the Administrative Procedures Act and its regulations. The commenter states that the phrases "fund levee operation and maintenance" are unclear regarding the actions covered under Section 5012. The commenter states that it is unclear whether "Levee improvement" or "Levee operation and maintenance" would cover repair and rehabilitation to maintain levees to DWR Bulletin 192-82 and federal PL 84-99 standards.

[Comments 8.9, 8.10, 8.12]

Response to Comments Received

The Council disagrees with the comments that the Council has exceeded its authority and has responded to comments concerning the Council's authority in detail in Response 4.1, above. The Legislature intended to give the Council the power to regulate Delta levee investment priorities by giving the Council specific authority and directive to "recommend in the Delta Plan priorities for state investments 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" (Wat. Code, § 85306) and promote strategic levee investments (Wat. Code, § 85305), in conjunction with the Legislative intent to "to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan" (Water Code section 85001(c)) and empowering the Council to "adopt regulations or guidelines as needed to carry out the powers and duties identified in the [Delta Reform Act]" (Wat. Code, § 85210, subd. (i)).

The proposed regulation does not limit DWR's flexibility but includes a reporting requirement, which is authorized under Water Code section 85210, subdivision (h), that states that the Council has the power "to request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan." The proposed regulation section 5012, subsection (c), would require DWR to submit a written report to the Council annually identifying its decisions to award State funds for Delta levee operation, maintenance, repair, rehabilitation, replacement and improvement projects within the legal Delta. The reporting requirements provide a means for the Council to track and ascertain if the DLIS priorities are achieving the intended purpose and to evaluate whether State investments in Delta levees comply with the DLIS priorities, Delta Plan, Delta Reform Act, and coequal goals. The proposed prioritization is not directed at specific programs or funding sources. The Delta Reform Act does not prescribe the methodology for the Council to determine the priorities for state investments in Delta levees nor does it direct the Council to consider funding sources in its analysis. Rather, the Delta Reform Act does direct the prioritization of investments for both project and nonproject levees. The proposed Delta Levees Investment Strategy (DLIS) prioritization is based on the risk to state interests, regardless of which program funds the investments and regardless of whether a levee is a project or nonproject levee. In this way, the same criteria for prioritization can be applied across multiple programs, which creates a level playing field for all State interests considered. Thus, the proposed regulation intends to track *all* discretionary State levee spending in the Delta, regardless of which program provides the funding. The proposed reporting requirement for the Department of Water Resources (DWR) does not specify which programs to include in its reporting, but rather requires DWR to explain the variations in funding for levee improvements relative to the recommended priorities. Consequently, the Council's expectation is that DWR would report on all discretionary funding decisions.

The Council disagrees that the phrase “fund levee operation and maintenance” are unclear regarding the actions covered under Section 5012 and that it is unclear whether “Levee improvement” or “Levee operation and maintenance” would cover repair and rehabilitation to maintain levees to DWR Bulletin 192-82 and federal PL 84-99 standards”. The Council removed the term “increasing the height of a levee” from section 5001(w) “Levee improvement” definition to clarify that restoration activities are not included in the definition for improvement. For further clarification see responses in Section 2. Definitions. above

No change is proposed in response to the comments. Please refer to Response 4.1. above on expressed statutory authority (Water Code, sections 85210 and 85306).

Response 4.3: Comments Regarding Council’s Consistency with other Laws and Regulatory Definitions

Summary of Comments Received

One commenter stated that the proposed regulation is contrary to Water Code section 12981, which the commenter notes was enacted in 1973, claiming that: “Contrary to the Legislature’s findings and declarations in WC 12981 the proposed regulations fail to include preservation of the physical characteristics of the Delta and promotion of agriculture and habitat as a State interest and purpose of funding” and that “The proposed regulation would greatly favor urban use to the detriment of agriculture and ignore the predominant need to preserve the physical characteristics of the delta.” [Comment 9.12]

Commenters suggested that the terms defined in the proposed regulation are inconsistent with existing procedures and programs, such as DWR’s ‘s Subventions Program and Special Projects Program and CVFPB’s state priorities for project levees. Specifically, comments claim that the terms “levee improvement” and “levee operations and maintenance” are not “aligned” with definitions in federal regulations and the Water Code for repair, rehabilitation, and replacement.

[Comments 9.9, 9.11, 15.1, 15.2, 16.3.12]

Response to Comments Received

Water Code section 12981 does not apply to the Council’s power to prioritize state investments in Delta levees. The Council’s authority is pursuant to the Delta Reform Act set forth in Water Code sections 85000 et seq. The Legislature is presumed to be, and in fact was, aware of existing laws concerning Delta levees, including Water Code section 12981, when it enacted the Delta Reform Act. Water Code section 12981, enacted in 1973, is set forth in Part 9 of Division 6 of the Water Code. The Delta Reform Act was enacted in 2009. After enacting the Delta Reform Act (including Water Code section 85306), the Legislature added Water Code section 12986, subsection (c), to Part 9 of Divisions 6, which clarifies that the Legislature intended the Council’s levee priorities to be followed, stating:

Reimbursements [for Delta levees] made pursuant to this section shall reflect the priorities of, and be consistent with, the Delta Plan established pursuant to Chapter 1 (commencing with Section 85300) of Part 4 of Division 35.

The Legislature intended to give the Council the power to regulate Delta levee investment priorities. It gave the Council specific authority and directive to “recommend in the Delta Plan priorities for state investments 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” (Wat. Code, § 85306) and promote strategic levee investments (Wat. Code, § 85305), in conjunction with the Legislative intent to “to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan” (Wat. Code, § 85001, subd. (c)) and the power to “adopt regulations or guidelines as needed to carry out the powers and duties identified in the [Delta Reform Act]” (Wat. Code, § 85210, subd. (i)).

The Delta Reform Act does not prescribe the methodology for the Council to determine the priorities for state investments in Delta levees nor does it direct the Council to consider funding sources in its analysis. Rather, the Delta Reform Act does direct the prioritization of investments for both project and nonproject levees. The proposed Delta Levees Investment Strategy (DLIS) prioritization is based on the risk to state interests, regardless of which program funds the investments and regardless of whether a levee is a project or nonproject levee. In this way, the same criteria for prioritization can be applied across multiple programs, which creates a level playing field for all State interests considered. Thus, the proposed regulation intends to track *all* discretionary State levee spending in the Delta, regardless of which program provides the funding. The proposed reporting requirement for the Department of Water Resources (DWR) does not specify which programs to include in its reporting, but rather requires DWR to explain the variations in funding for levee improvements relative to the recommended priorities. Consequently, the Council’s expectation is that DWR would report on all discretionary funding decisions.

For further discussion of how priorities were developed, see Response 5, Methodology below. In addition, see discussion in Response 2.1, above, with respect to the definitions.

The Council reviewed the public comments and in response made one change to the regulation text of section 5001(w), removing “increasing the height of a levee” as one of the examples of levee improvement, to read as follows (denoted in double strikeout):

(w)“Levee improvement” means any activity that is not levee operation and maintenance, and that is intended to reduce the probability of flooding or the addition of a feature that did not previously exist. Examples of levee improvements include changing levee geometry to reach a higher level of protection, ~~increasing the height of a levee~~, providing riprap where none previously existed, and other similar activities.

No further changes to the proposed regulations are proposed in response to these comments beyond the modifications to section 5001(w) described above.

Response 4.4: Comments regarding other statutes pertaining to Delta levees priorities and repeal by implication.

Summary of Comments Received

No changes. The Council disagrees. Some commenters claim that the Council’s proposed regulation would override priorities established in other laws. They cite, as an example, to DWR’s “Delta Levees Special Flood Control Projects Program” (Wat. Code, § 12310 et seq.). Water Code section 12313, which commenters specifically call out, was enacted in 1988. It provides that DWR is to develop a list of areas where flood control work is needed and consult with appropriate federal, state, and local agencies in developing the list. The list is to establish priority areas based upon certain criteria. According to the commenters, “recommendations” “fit perfectly and harmoniously” with Water Code section 12313. Commenters note that the Legislature “is deemed to be aware of statutes... already in

existence, and to have enacted ... a statute in light thereof.”
[Comments 9.9, 13.2]

Response to Comments Received

When reviewing statutes, courts first must determine and effectuate the intent of the Legislature. “In 2006, the Legislature began efforts to prioritize how the State assisted Delta landowners to maintain and improve their levees, through the Delta Levee Program. The 2006 State Budget conditioned spending on the South Delta Improvement Project on the Secretary of Natural Resources Agency proposing priorities for Delta levee investments. In March 2007, the Secretary submitted a report to the Legislature identifying possible Delta levee investment priorities offered by the Department of Water Resources and the Department of Fish & Game, but the report did not recommend any priorities.” (See comment letter #23 from Alf Brandt.) The Legislature also required the Secretary to convene a committee to develop a “strategic vision” for the Delta, and then-Governor Schwarzenegger issued an executive order creating the Delta Vision Blue-Ribbon Task Force. The Delta Vision report included a recommendation on Delta levee strategy.

The Legislature responded to the Delta Vision report in 2009, approving the Delta Reform Act. In developing the bill that would become the Act, bill language required the Council to “set” priorities for the State’s Delta levee investments. In Assembly-Senate discussion, Senate staff expressed concern that the Legislature held the prerogative to set budget priorities, so the final bill language required the Council to “recommend” priorities. As explained in the Assembly floor analysis for the Delta Reform Act, the combination of the Council’s authority to recommend priorities and enforce the Delta Plan gave the Council authority to establish Delta levee investment priorities, in the absence of the Legislature imposing priorities. (Comment Letter #23 from Alf Brandt.)

The Legislature is presumed to be, and in fact was, aware of existing laws concerning Delta levees when it enacted the Delta Reform Act. The Legislature intended to give the Council the power to regulate Delta levee investment priorities. It gave the Council specific authority and directive to “recommend in the Delta Plan priorities for state investments 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” (Wat. Code, § 85306) and promote strategic levee investments (Wat. Code, § 85305), in conjunction with the Legislative intent to “to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan” (Wat. Code, § 85001, subd. (c)) and the power to “adopt regulations or guidelines as needed to carry out the powers and duties identified in the [Delta Reform Act]” (Wat. Code, § 85210, subd. (i)). Further, courts have held that depending upon their context, the terms “recommend” and “recommendations” can be mandatory. (*Western Oil & Gas Ass’n v. Air Resources Board* (1984) 37 Cal.3d 502, 511 [“Words such as ‘recommends’ and ‘recommendations’ are used in the codes both in a mandatory and advisory sense, and the determination of the legislative intention depends upon the context in which the word is used.”].) When read in the context of Legislative intent of the Delta Reform Act, the Council’s power to adopt regulations to carry out the powers and duties identified in the Delta Reform Act (Wat. Code, § 85210, subd. (j)), the Court’s interpretation of the Legislature’s delegation of “broad authority” to the Council (DSC Cases, supra, 48 Cal.App.5th 1014, 1052 and 1070), and the specific provisions in Water Code sections 85305 and 85306, the term “recommend” as used in Water Code section 85306 supports a regulatory approach.

Neither does this interpretation make Water Code sections 12313, 85305, and 85306 so “irreconcilable, clearly repugnant, and so inconsistent that [they] cannot have concurrent

operation.” Any seemingly conflicting provisions can be harmonized with the use of applicable rules of statutory construction. As commenters have noted, it a rule of statutory construction that a more specific statute will control over a more general statute. While Water Code section 12313 addresses flood control work generally, Water Code sections 85305 and 85306 address specifically the prioritization of state investments in Delta levees. Moreover, DWR is required to consult with appropriate agencies in complying with Water Code, section 12313, including the Council and its prioritization. Water Code sections 85305 and 85306 were enacted in 2009, after Water Code section 12313, enacted in 1988, and as commenters have noted, the Legislature is deemed to be, and in fact was, aware of other laws governing this area when it gave the Council the authority and mandate to regulate and prioritize state investments in both project and nonproject Delta levees.

Response 5: Comments Concerning DLIS Methodology

Summary of Comments Received

The Council received several comments concerning the ranking of the individual islands or tracts in the proposed DLIS regulation and asking why a particular asset class or population center was not given a higher priority. Several comments focus on the nature of the Delta as an interconnected system and point out that the DLIS priorities do not reflect the interconnected nature of the Delta. The Council received many comments expressing concern about future funding for DWR’s Subventions Program as well as comments requesting that the Subventions Program continue to receive funding and function in its current state. A few of the comments concern cost allocations for levee investments. Several noted that the prioritization does not differentiate between large urban population centers on the periphery of the Delta and the largely agricultural islands and tracts in the Delta Primary Zone. Some comments stated that the prioritization should take into account the condition of each levee system. Some comments stated that the first priority should be achieving a levee standard, such as Bulletin 192-82, throughout the Delta before targeting specific islands and tracts for investment. The comments go on to point out that each of these areas is generally funded by a different program. Some comments expressed concern about the data or the methodology that was used to develop DLIS or stated that DLIS was not consistent with the coequal goals.

[Comments 1.6, 2.4, 2.5, 2.8, 2.10, 3.6, 4.6, 4.7, 5.6, 6.7, 7.1, 7.2, 7.2, 7.3, 7.4, 7.5, 8.2, 8.6, 8.7, 8.8, 8.11, 9.3, 9.4, 9.5, 9.6, 9.7, 9.10, 9.11, 9.14, 9.15, 9.16, 9.17, 9.21, 9.22, 9.24, 9.25, 9.26, 9.27, 9.28, 9.30, 9.31, 9.32, 9.33, 10.1, 10.2, 11.1, 12.2, 12.3, 12.4, 14.1, 14.2, 14.3, 14.5, 16.1.1, 16.2.5, 16.2.7, 16.2.8, 16.2.9, 16.3.13, 16.3.14, 16.6.19, 16.6.20, 16.6.21, 16.6.22, 16.6.23, 16.7.24, 16.7.27, 16.8.29, 16.8.30, 16.8.31, 16.9.33, 16.9.38, 16.10.41, 16.10.42, 16.10.45, 16.10.46, 16.10.47, 16.11.49, 6.11.50, 16.11.51, 16.11.52, 16.12.57, 16.12.58, 16.12.59, 16.12.61, 16.13.67, 16.13.68, 16.13.69, 16.13.70, 16.13.71, and 21.1]

Response to Comments Received

Response 5: Comments Received Concerning DLIS Methodology

No action taken. Development of the DLIS has been an open and transparent process that allowed numerous opportunities for public and stakeholder involvement. In addition to the independent peer review panel, the Council deployed an extensive public engagement process to support development of the DLIS methodology. The proposed regulatory amendment was developed over an approximately six-year period in collaboration with State agencies, local

reclamation districts, Delta landowners and businesses, and other stakeholders, and is based on the best available existing data and lessons learned from other State and local programs and planning efforts. Council staff hosted over 70 workshops and public meetings with Delta residents, reclamation district engineers, water supply and ecosystem interests, and other Delta stakeholders. Overall, the development of the DLIS was discussed at over 47 Council meetings.

The Council Project Development Team (PDT) conducted public meetings and workshops in the Delta at key milestones to review project activities, gather input, and develop and refine proposed investments and portfolios. The Council PDT used a consultation and collaboration communications approach for public meetings and workshops. Additionally, throughout the project, the Council PDT conducted outreach calls to stakeholders to gather information, review and clarify issues and comments, and discuss potential responses and revisions for the project.

Between 2014 and 2015, the Council hosted expert panel discussions at Council meetings and public meetings in locations throughout the Delta. These included outreach listening sessions, technical outreach, and presentations with agencies and organizations. For example, public information workshops were held on December 8, 2014, in Clarksburg; January 5, 2015, in Brentwood; March 11, 2015, in Sacramento; April 27, 2015, in Stockton; April 29, 2015, in Walnut Grove; and May 19-20, 2015, in Sacramento.

A number of target stakeholder groups were actively engaged throughout the planning process, so that their expertise and perspectives could be considered in establishing DLIS investment priorities. The stakeholder groups included:

- Federal, State, and local elected officials representing the Delta region.
- Federal, State, regional, and local agencies with responsibilities for flood management, emergency response, water supply, environmental management, transportation, land use, recreation, and energy and utilities in the Delta region.
- Delta residents, businesses, and landowners.
- Water suppliers that rely on the Delta.
- National, State, and local interest groups involved in Delta issues, including agriculture, business, labor, environmental, recreation, and community organizations and associations.
- Other members of the public who have been involved in Delta issues.
- Within these diverse groups, the Council informed and engaged each of three important levels of management—executive, managerial, and technical/project—to ensure that data, information, analysis, results, and preferences were considered and evaluated.

The Council PDT developed and released informational materials and reports throughout the DLIS development process, including:

- *Project Website*: The Council PDT maintained an updated project page on the Council website during each phase to provide current information about the project and announce opportunities to participate. The website included technical information developed for the project, presented as interactive graphics.
- *Public Meeting/Workshop Presentations and Handouts*: The Council PDT prepared presentations and handouts for each public meeting/workshop.
- *Notifications*: The Council PDT developed and maintained a project contact list to distribute electronic notification of project report availability, schedules and agendas of public meetings, and other outreach and communications activities.

- *E-Newsletter (quarterly)*: The Council PDT distributed a quarterly electronic newsletter to the project contact list to keep them informed of project activities, progress, and opportunities for involvement.
- *Technical Memoranda & Draft and Final Strategy and Recommendations* established opportunities for public review and comment.

The Council developed DLIS based on a comprehensive methodology that quantifies risk by considering the threats to Delta levees and the assets protected by Delta levees. The DLIS also considers multiple beneficiaries of Delta levee investments. Building on the results of previous Delta levee planning efforts, the Council collected and used best available existing data and information from numerous sources to evaluate risks to State interests in the Delta. Risk to State interests was defined as risk to public safety, property and infrastructure, water supply reliability, the Delta ecosystem, and the unique attributes of the Delta as an evolving place. The Council did not develop new data to analyze risk. The Council intends to update the DLIS Decision Support Tool (DST) with new data as it becomes available. The prioritization will be examined and evaluated on a regular basis, and reconsidered as investments are made and new data becomes available.

In early 2015, the DLIS team prepared an Interim Progress Report summarizing the work conducted during the first 9 months of the DLIS project. The report focused primarily on the methodologies planned for implementing the DLIS project to facilitate a “mid-course” review by an independent science panel, which completed its work in July 2015. Panel members offered comments for improvement and concluded that the “overall methodology of using existing data, identifying important metrics, aggregating results, and making comparisons across islands is conceptually sound” (Mitchell et al. 2015).

Given the increasingly limited financial resources for levee investments at the federal, state, and local levels, the DLIS prioritization is intended to identify the most efficient use of those resources by identifying the most urgent risks and evaluating the benefits and trade-offs of risk reduction alternatives. Flood risk in the Delta cannot be eliminated. The DLIS identifies areas with the greatest risks, and these priorities form the basis for strategic levee investments.

Risk is defined as the product of the probability and the consequences of flooding. The risk analysis methodology estimated the risks of flooding Delta islands and tracts using the probability of levee failure caused by hydraulic flooding or seismic hazards, and the consequences of flooding to State interests. The Council identified the State’s interests to include:

- People.
- Property.
- Habitat.
- Water supply.

Estimates of current and future flood risks in the Delta were developed based on existing data, and they provide the baseline needed to evaluate: a) potential increases in risk due to future conditions; and b) the risk reduction that may be achieved with various levee investment portfolios. (See the Methodology Report for more detail (Council 2016b) (Tab K))

In keeping with the Council’s directive to rank risk to loss of life in the Delta as most important,

the DLIS team identified the islands and tracts that together comprise at least 90 percent of the total risk to life across the Delta. For the other risk metrics, the DLIS team identified the islands and tracts that together comprise at least 80 percent of the risk in each category. The high-risk islands identified resulted in the following:

- People – 17 islands with expected annual fatalities (EAF) greater than 0.02 lives per year (at least 90 percent of Delta-wide EAF).
- Property – 19 islands with expected annual damages (EAD) greater than \$900,000 per year (at least 80 percent of Delta-wide EAD).
- The Delta ecosystem – 20 islands with more than 89 acres of expected annual loss of habitat (at least 80 percent of Delta-wide expected loss of high-value, non-tidal habitat).
- Water Supply – 23 important water supply islands with a probability of flooding greater than 0.5 percent per year (1-in-200-year probability). Important water supply islands and tracts are those that provide a water supply function (water quality protection, water conveyance corridor, or water supply infrastructure) for two or more user groups (Antioch, CCWD, East Bay Municipal Utility District, North Delta, Sacramento, Solano and Napa, Stockton, Central/South Delta, CVP/SWP, or Suisun Marsh).

Each metric was assigned an equal weight in the analysis, (e.g. no metric was considered more important than another).

Islands and tracts were grouped into three categories based on their risk, and considering all metrics: Very High Priority, High Priority, and Other Priority. Using the Decision Support Tool (DST), 31 islands characterized as more than one State interest were included in the Very-High Priority category. Forty-five islands and tracts characterized as high risk to a single State interest were included in the High Priority category. The remaining islands and tracts were listed in the Other Priority category.

The Council also identified special considerations for additional evaluation, including all of the following:

- Hydraulic connection between adjacent islands.
- Ecosystem restoration opportunities.
- Delta as a place.
- Suisun Marsh levees.
- Socially vulnerable communities that are disproportionately at risk from climate change.

The evaluation of these special considerations resulted in adjustments to the priority of several islands and tracts. By taking these special considerations into account, the Council developed a recommended list for State levee investment priorities, which includes 33 islands and tracts in the Very-High Priority category and 50 islands and tracts in the High Priority category.

The DLIS regulation sets forth a prioritization that guides State spending to the islands and tracts that pose the greatest risks to State interests. Over time, as these levees are improved, the risk posed by these islands and tracts will drop to a tolerable level and the islands will drop down from Very-High Priority or High Priority to Other Priority. This allows for islands in the Other Priority category to rise to a higher priority. Future risk assessments will be conducted at the Council's discretion.

The Delta levees form an intricate system of waterways that impact water supply, water quality, and ecosystem functions as well as provide flood protection for the land behind them. These systems are complex and interact with each other in complex ways. Ideally, risk to the system would be calculated as a product of the probability of an island flooding and the impact of that flooding on the system. However, the ability to accurately model the consequences of one levee failure to the system as a whole is beyond the scope or ability of this rulemaking. Similarly, cost allocations and funding structures are beyond the scope of this rulemaking.

The DLIS prioritization is not directed at specific programs or funding sources. The direction given to the Council by the Legislature was to prioritize both project and nonproject levees and did not differentiate between project and nonproject levees. The prioritization is based on risk to State interests regardless of which Delta Zone they are located in, and regardless of which program funds the investments. In this way, the same prioritization can be applied across programs and creates a level playing field for State interests.

The proposed regulation would enable the Council to track all State discretionary levee investment spending in the Delta, independent of the program that provides it. The reporting requirement for DWR does not specify programs to include in its reporting. The Council expects that DWR would report on all of its discretionary levee funding decisions.

No changes to the proposed regulations, ISOR, or economic and fiscal analysis are proposed in response to these comments.

Response 6: Comments Concerning Subventions Program Impacts

Summary of Comments Received

No action taken. Some commenters expressed concern that proposed definitions of "Levee Operations and Maintenance" and "Levee Improvement" do not support the Subventions Program. Other commenters stated that they believe that the definitions could modify the Subventions Program as it currently exists and limit funding opportunities for all maintaining agencies to perform necessary maintenance and rehabilitation of their levee systems and that the definitions, as proposed, do not support the Subventions Program - a program that already has priorities and structure to balance funding in the Delta. Commenters state that any proposed rulemaking should align with existing legislation and programs. Other comments request that work completed under the Subventions Program be explicitly exempt from the prioritization. [Comments 1.1, 3.1, 4.1, 5.1, 6.1,7.1, 9.9, 9.10, 9.12, 10.4, 12.1, and 16.8.29]

Summary of Comments Received

Response 6: Comments Received Concerning Subventions Program Impacts

No action taken. As noted by DWR during the November 17, 2022, public hearing on the proposed regulation (Comment 16.15), the definitions included in the proposed regulation would not change the Subventions Program or the funding guidelines adopted by the CVFPB.

The DLIS prioritization is not directed at specific programs or funding sources. The direction given to the Council by the Legislature did not differentiate between project and nonproject levees. The prioritization is based on the risk to State interests regardless of which program funds the investments. In this way, the same prioritization can be applied across programs and creates a level playing field for State interests. In addition, after adopting the Delta Reform Act, the Legislature enacted Water Code section 12986, subdivision (c), which addresses Delta levee maintenance and the Subventions Program and further codifies the Legislature's intent that the Council's levee priorities be followed, stating:

Reimbursements [for Delta levees] made pursuant to this section shall reflect the priorities of, and be consistent with, the Delta Plan established pursuant to Chapter 1 (commencing with Section 85300) of Part 4 of Division 35.

The proposed regulations would enable the Council to track all State discretionary levee investment spending in the Delta, independent of the program that provides it. The reporting requirement for DWR does not specify programs to include in its reporting. The Council expects that DWR would report on all of its discretionary levee funding decisions.

While the Subventions Program funds a variety of Delta levee activities, its first priority is operations and maintenance.¹ The proposed regulation identifies defined operations and maintenance activities as a systemwide priority. Only defined improvement activities are subject to being categorized as Very-High Priority, High Priority, or Other Priority in the proposed regulation. While the Council expects that DWR would report on discretionary operations and maintenance activities funded by the Subventions Program, the proposed regulation would not impact a levee maintaining agency's ability to apply for or receive funding for activities through the Subventions Program. If DWR funds improvement activities through the Subventions Program in a manner that varies from the DLIS priorities outlined in the proposed regulation, DWR must describe why a variation from the priorities is necessary and explain how the awarded funding nevertheless protects lives, property, or other State interests, such as infrastructure, agriculture, water supply reliability, Delta ecosystem, or Delta communities.

No changes to the proposed regulations, ISOR, or economic and fiscal analysis are proposed in response to these comments.

Response 7: Comments Concerning the Adequacy of Economic Analysis for the Proposed Regulation

Summary of Comments Received

The Council received several comments concerning the adequacy of estimates of costs resulting from the proposed amendment presented in the Economic and Fiscal Impact Analysis (EFIA) (Tab J). Several comments focused on the nature of the Delta as a system, suggesting that levee failure resulting from investments prioritized by the DLIS could result in water supply interruptions, which could in turn result in statewide economic impacts, and that the Council is

¹ Delta Levee Maintenance Subventions Program 2016 Guidelines, Figure 1. Funding Priority Flow Chart, page 20. Available at: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/Delta-Levees-Maintenance-Subventions/Files/08-26-16-Subventions-Guidelines.pdf>

ignoring the real consequences of the proposed DLIS. One commenter stated that the agricultural economy supports the levees that support the flood control system, and that if we lose agricultural islands, the whole system would fail.

Other comments identified and expressed concerns that the EFIA did not adequately address all the economic impacts anticipated by commenters and that certain specific cost items were not considered in the EFIA. Specific cost items related to the improved levee maintenance identified in comments included productive farmland, residential and commercial structures, other flood control costs, island- or tract-specific infrastructure, water quality, wildlife, water conveyance, public safety, and the preservation of the beneficial uses of the Delta.

Other comments expressed concerns regarding the magnitude of estimated impacts in the EFIA. Comments expressed concern that the EFIA is substantially flawed, as it uses allegedly outdated land values in the annualized cost of flooded island restoration, inadequately considers long-term cumulative impacts from changes in Delta levee investments, increases local agency fees to offset State investment, and would have other indirect impacts to Delta islands or tracts.

Some comments expressed concerns about the DLIS priority system imposing a rigid mandate for levee funding. Several comments suggested that a rigid prioritization system could result in the defunding of specific islands or tracts or unnecessarily discourage investment in levee maintenance. Other related comments noted that these concerns about the rigidity of the DLIS system would result in greater economic impacts than reported in the EFIA because specific islands or tracts assigned lower priorities under DLIS would have an increased risk of levee failure, with associated costs greater than what is shown in the EFIA. One commenter asserted that this is not a Minor Regulation as identified by the Council but rather a Major Regulation.

One commenter identified that the EFIA appeared to be missing footnotes because the citations list at the end of the EFIA document did not appear to correspond to the footnotes or endnotes throughout the document and the referenced text appeared to be missing.

[Comments 8.2,8.118.13, 9.2, 9.21, 9.27, 9.30, 16.6.22, 16.12.63, and 20.3]

Response to Comments Received

Response 7: Comments Received Concerning the Adequacy of Economic Analysis for the Proposed Regulation

The EFIA considers the potential economic and fiscal impacts of the proposed regulation. It relies on the existing DLIS analysis for the underlying data that form the basis of the cost and benefit estimates. The DLIS analysis was developed through an open, public process and leveraged best available science.

The DLIS prioritization considers the importance of Delta levees as a system to state water supply reliability. In particular, Section 5.2.5 (Water Supply Risk) of the DLIS Risk Analysis Methodology describes the DLIS analysis of the Delta as a system. This was factored into the DLIS prioritization in a qualitative manner because, as stated on page 129 of the DLIS Risk Analysis Methodology report: “However, the best available information does not support a quantification of the link between islands flooding and the impact on water supply from any of these mechanisms. It is not possible at this time to quantify the amount of water that would be disrupted or the duration of such a disruption for different users, given a particular configuration of flooded islands; therefore, it is not possible at this time to calculate water supply risk in a

classical sense; i.e., as the product of probability and consequence, because the consequence is unknown.”(DLIS Risk Analysis Methodology report Tab K). Therefore, the Delta as a system was considered in the DLIS prioritization development process, but it was not possible to monetize the associated economic benefits or costs. The DLIS Risk Analysis Methodology report (Tab K) states that the best available existing “data allow us to develop a conceptual assessment of risk by identifying those islands that have a high risk of flooding and play an important role in ensuring a reliable water supply.” This Conceptual Water Supply Risk is described under Section 5.2.5.1 in the DLIS Risk Analysis Methodology report. The DLIS prioritization of islands or tracts considered a range of factors in addition to water supply benefits, including public and private property, fatalities, recreation, and ecosystem/habitat.

The calculation of Estimated Annual Damages (EAD) that forms the basis of the economic costs shown in the EFIA uses the data and analysis developed for the DLIS. The DLIS Risk Analysis Methodology report (Tab K) describes in Section 5.2.2 the factors that were considered in the calculation of EAD. The DLIS considers the effect of Delta levees in protecting legacy communities in the Delta under the analysis of the Delta as a Place (Section 1.3.5 of the Risk Analysis Methodology report). In addition, an inventory of island or tract-specific assets (e.g., businesses, infrastructure, property) that were included in the DLIS is shown in Appendix A of the DLIS Risk Analysis Methodology report. The impacts to Delta communities, individuals, and industries are included in the DLIS calculation of EAD. All of the island- or tract- specific assets included in the DLIS were considered in the EFIA.

The methodology applied in the EFIA to monetize potential impacts of the proposed regulation accounts for all island or tract-specific costs. Including an assumed increase in local island or tract fees for levee maintenance would double-count the potential economic impact. If fees were to increase, this would reduce EAD by an equal amount. If it is assumed that local assessments and fees increase, then there is no change in EAD.

Delta businesses were inventoried in the DLIS and included in the calculation of EAD. These are listed under the “Public Safety: Private Property” Asset Categories in the DLIS Risk Analysis Methodology report (See Appendix A of the DLIS Risk Analysis Methodology report for an inventory of private property asset categories for each island, Tab L). These assets are then valued and included in the calculation of EAD (value of potential damage multiplied by the probability of occurrence), which is described under Section 5.2.2 of the DLIS Risk Analysis Methodology report. The DLIS data includes all businesses on each island and tract, and this data is factored into the EFIA for the proposed amendment.

The measure of EAD is the damage (i.e., impact or cost) from a levee failure multiplied by the probability of occurrence. It is not appropriate to count the entire cost of an island or tract failure, which could easily exceed several billion dollars, as an impact in the EFIA. The total cost of a levee failure is adjusted to account for annual expected damages, adjusted by the probability of occurrence. This adjustment allows for the condition of the levees as well as the specific hydrologic risk that an island or tract may face. The EFIA summarizes the cost of increased EAD on specific islands or tracts in this way, as well as any offsetting benefit of reductions in EAD on other Delta islands or tracts.

The proposed regulation is not a rigid priority system that would defund levee investments for specific islands or tracts. Rather, it is a prioritization based on the DLIS to allocate available funds – the DLIS does not affect the amount of available funding. Under the proposed regulation, DWR may vary from the DLIS funding priorities under certain circumstances and, if so, must report each variation and justify its funding decisions considering the established DLIS

priorities. The proposed regulation would not defund levee investments at specific islands or tracts because DWR has discretion to vary from the priorities. Although the proposed amendment allows DWR to vary from DLIS priorities, the EFIA does consider the effect of prospectively reallocating \$20.4 million to Very High Priority islands or tracts to illustrate the potential indirect economic effects of reallocating expenditures.

As identified in the Form STD 399, the Council used the costs and benefits stated in the EFIA to determine that the economic impact of the proposed regulation, which includes the fiscal impact, is below \$10 million, and not over the \$50 million impact that would make the proposed regulation a Major Regulation.

The Council, in response to the comment concerning missing citations and footnotes, modified the EFIA to rectify those omissions and provided an additional 15-day public comment period for those changes.

Response 8: Comments Requesting a Deadline for the Annual Report Summary

Summary of Comments Received

The Council received comments requesting that the proposed regulation include a deadline date for DWR's annual report.

[Comments 2.9, 8.5, and 16.13.74]

Response to Comments Received

Response 8: Comments Received Requesting a Deadline for the Annual Report Summary

The Council made changes to the proposed regulations. California Code of Regulations, title 23, section 5012, subsection (c)(1) now states (denoted in double underline):

The California Department of Water Resources shall submit a written annual report to the Council, as well as present the report to the Council, on State funds distributed or provided by the California Department of Water Resources for levee operation, maintenance, repair, rehabilitation, replacement and improvement projects within the legal Delta. At least 45 days prior to the oral presentation before the Council, and no later than March 1 of each calendar year, the California Department of Water Resources shall submit the written annual report to the Council and make the report publicly available.

Response 9: Footnotes Missing from Economic and Fiscal Impact Assessment

Summary of Comments Received

The Council received a comment letter informing the Council that footnotes for the document titled "Appendix 1 EFIA Economic and Fiscal Analysis" attached to the ISOR and the Form STD 399, published August 26, 2022, were inadvertently missing from the document. [Comment 8.14, 16.12.64]

Response to Comments Received

Response 9: Comments Received Concerning Modified Economic and Fiscal Impact Assessment

Footnotes were added. The missing footnotes were provided in numerical order, published on the Council's website. Their availability was also announced and provided at the monthly Council meeting on December 15, 2022. These footnotes released corresponded to the respective footnote numbers cited throughout—the Appendix 1 EFIA – Economic and Fiscal Impact Analysis. Their addition was noticed in the Notice of Modification to Text of Proposed Regulations and Addendum to Initial Statement of Reason and Form 399-Economic and Fiscal Impact Statement, for OAL File No. Z-2022-0816-07 and they were made available for public comment during the public comment period from December 15, 2022, through January 9, 2023.

Response 10: Comments Expressing Support of Proposed Regulation

Summary of Comments Received

The Council received several comments expressing support for an aspect or the whole of the regulation. One commentator stated that they agree with the goal of prioritizing levee investments. DWR stated they appreciate the collaborative working relationship with Council staff, as well as the Central Valley Flood Protection Board, through the MOU working group. They added they support the proposed regulations, including the priority and the value placed on operations and maintenance. Another commenter stated that it was time to adopt a DLIS a regulation.

[Comments 16.2.4, 16.4.15, 16.5.16, 16.5.17, and 16.9.32]

Response to Comments Received

Response 10: Comments Received in Support of the Proposed Regulation.

No changes made. The Council acknowledges the comments of support for the proposed regulation.

Alternatives that Would Lessen Adverse Economic Impact on Businesses

The Council has not identified any alternative that would lessen any adverse impact on small businesses. No alternative that would lessen any adverse economic impact on small businesses was rejected by the Council. The Council has determined that the proposed regulations will not have a significant adverse impact on businesses, nor will the proposed regulations affect the ability of California businesses to compete with businesses in other states (see pg. 32 of the ISOR and Sections V.1., V.5, and, V.7. of the EFIA for discussion)

Alternatives Determination for the Proposed Action

For the reasons set forth in the ISOR (pg. 27-32) and accompanying discussion in Sections V.1., V.5., and V.7. of the EFIA, the Council determined that no alternatives to the proposed regulation considered by the Council would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Update of Materials Relied Upon

No additional materials beyond those identified in the ISOR were relied upon Initially, the ISOR (with attached EFIA, lacking footnotes) was published without the footnotes in the document. Once the error was discovered, the missing footnotes were provided in numerical order, published on the Council's website, and announced and provided at the monthly Council meeting on December 15, 2022. These footnotes released corresponded to the respective footnote numbers cited throughout—the Appendix 1 EFIA - Economic and Fiscal Impact Analysis.

Documents Incorporated by Reference

The regulation incorporates by reference DLIS priorities depicted in Appendix P of the Delta Plan as approved August 26, 2021. Appendix P was first made publicly available at the August 26, 2021, Council meeting and thereafter with Notices for the proposed rulemaking published on August 26, 2022, September 20, 2022, and December 15, 2022. In addition, it has been available on the Council's designated DLIS website since August 26, 2022, and in-person by request at 715 P Street, 15-300, Sacramento, CA 95814

Attachments

Attachment 1: Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022, and Appendix B: Summary of Comments Received during Public Comment Period from December 15, 2022, through January 9, 2022

Technical and Empirical Studies, Reports, or Documents

The Council relied upon the following studies, reports, and documents.

- Addendum to Delta Plan Amendments Program Environmental Impact Report: Delta Levees Investment Strategy Update. Council, 2021.
- Comparison of PL 84-99 Analyses Delta Levees Investment Strategy (DLIS) Technical memorandum. Delta Stewardship Council (Council), 2017.
- Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement. Council. 2012.
- Economic Sustainability Plan for the Sacramento-San Joaquin Delta. Delta Protection Commission, 2012.
- Delta As Place: Agriculture White Paper. Council. 2010.
- Delta Flood Management Investment Strategy Principles. Council, Approved as Interim Guidance on July 24, and August 27, 2015.
- Delta Flood Risk Management Assessment District Feasibility Study and Delta Levee Financing Options Report. Delta Protection Commission. 2018.
- Delta Levees Investment Strategy Issue Paper. Council, 2015.
- Delta Levees Investment Strategy Final Report. Council, 2017.
- Delta Levees Investment Strategy Risk Analysis Methodology Report. Council. 2017.
- Delta Levees Special Flood Control Projects. DWR. 2017
- Delta Memorandum of Understanding (MOU) Working Group Meeting with Delta Stewardship Council (Council) and Central Valley Flood Protection Board (CVFPB). Attendees: Laura Hollender (DWR), Chris Williams (DWR), Erin Mullin (Council), Ryan Stanbra (Council), Meghan Sullivan (CVFPB), and Erica Bishop (GEI). DWR. 2019.
- DLIS Memorandum of Understanding and Joint Implementation Plan. Council, June 22, 2017. Meeting.
- Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. Council, 2013.
- Delta Plan Program Environmental Impact Report. Council, 2013.
- Delta Plan Amendments. Council, April 2018.
- Delta Plan Ecosystem Amendment: DRAFT APPENDIX Q1. Methods Used to Update Ecosystem Restoration Maps Using New Digital Elevation Model and Tidal Data. 2020
- Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1. Council staff report, August 2021.
- Delta Plan Executive Summary, Delta Plan Policies and Recommendations. Council, 2013. DLIS Risk Analysis Methodology Report. Council, Revised June 2017.
- DLIS: Sea Level Rise Methodology. Council, 2015.
- Delta Reclamation District Financing and Budgets. Council, 2015.
- Delta Risk Management Strategy, Phase 1. Risk Report: Section 2. DWR, 2009.
- Discussion Draft of Potential Revisions to Chapter 7 Policies and Recommendations. Council, March 23, 2017. Meeting.

- Draft Report: Earthquakes and High Water as Levee Hazards in the Sacramento-San Joaquin Delta. Delta Independent Science Board (Delta ISB), 2016.
- Economic Sustainability Plan for the Sacramento-San Joaquin Delta. Delta Protection Commission, 2012.Final: Levee Related Habitat Review Issue Paper. Council, 2015.
- Impacts for Planning and Analysis Model. <http://www.implan.com/>. 2014 R3 California Counties Database (Delta Counties). MIG Inc. 2014.
- Inspection and Local Maintaining Agency Report of the Central Valley State-Federal Flood Protection System. DWR,2013.
- 2017 Light Detection and Ranging Data. <https://data.cnra.ca.gov/dataset/delta-lidar-2017>Map of the Sacramento-San Joaquin Delta. Council,2014.
- Map of the Sacramento-San Joaquin Delta and Suisun Marsh prepared by the Flood SAFE Environmental Stewardship and Statewide Resources Office (FESSRO). DWR, 2013.
- Personal communication with Erin Mullin. Senior Engineer. Delta Stewardship Council. January 29, 2019. Updated to 2021 dollars using GDP-IPD. Council. 2019.
- Reclamation District Ability to Pay (ATP) Analysis Technical memorandum. Council,2017.
- Resolution 2018-1. Certification of the Delta Plan Amendments Program Environmental Impact Report, Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, and Adoption of the Delta Plan Amendments. Council, April 26, 2018.
- Resolution 2021-02. Approval of the Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1. Council, August 26, 2021.
- Review Technical Memoranda from Delta Levee Prioritization Methodology Peer Review Meeting. Council, May 19-20, 2015.
- Revisions to Current DLIS Amendment. Council, March23, 2017 Meeting.
- Sacramento-San Joaquin Delta Atlas. DWR,1995.
- Sacramento–San Joaquin Delta Reform Act of 2009
- Staff-Recommended DLIS Prioritization Table and Map; Staff-Recommended Modified Preliminary Draft Regulatory Language for Delta Plan Policy RR P1. Council. 2021.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2014.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2015.
- Suisun Marsh Properties Map. Suisun Marsh RCD,2015.
- Text of Proposed Amendment to Existing Regulation Sections 5001 and 5012; proposed Appendix P.
- U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF>.

Economic and Fiscal Analysis (Appendix 1 to ISOR)

CITATIONS

- California Department of Water Resources (DWR). 2017. Delta Levees Special Flood Control Projects. Project List 3/2/2017.
- California Department of Water Resources (DWR). 2019. Delta Memorandum of Understanding (MOU) Working Group Meeting with Delta Stewardship Council (Council) and Central Valley Flood Protection Board (CVFPB). Attendees: Laura Hollender (DWR), Chris Williams (DWR), Erin Mullin (Council), Ryan Stanbra (Council), Meghan Sullivan (CVFPB), and Erica Bishop (GEI). January 23, 2019.
- Delta Protection Commission (DPC). 2012. Economic Sustainability Plan for the Sacramento-San Joaquin Delta. pp. 61-62.
- Delta Protection Commission (DPC). 2018. Delta Flood Risk Management Assessment District Feasibility Study and Delta Levee Financing Options Report. Delta Stewardship Council (Council). 2010. Delta As Place: Agriculture White Paper.
- Delta Stewardship Council (Council). 2012. Cost Analysis. Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement.
- Delta Stewardship Council (Council). 2017. Delta Levees Investment Strategy Final Report.
- Delta Stewardship Council (Council). 2017. Delta Levees Investment Strategy Risk Analysis Methodology Report.
- Delta Stewardship Council (Council). 2019. Personal communication with Erin Mullin. Senior Engineer.
- Delta Stewardship Council. January 29, 2019. Updated to 2021 dollars using GDP-IPD.
- Delta Stewardship Council (Council). 2021. Resolution 2021-02. Approval of the Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1. August 26, 2021.
- Delta Stewardship Council (Council). 2021. Staff-Recommended DLIS Prioritization Table and Map; Staff-Recommended Modified Preliminary Draft Regulatory Language for Delta Plan Policy RR P1.
- MIG Inc. 2014. Impacts for Planning and Analysis Model. <http://www.implan.com/>. 2014 R3 California Counties Database (Delta Counties).
- U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF>.

Attachment 1 to the FSOR

Appendix A

Comment Period

Aug. 26, 2022 – Nov. 21, 2022

&

Appendix B

Comment Period

Dec. 15, 2022 – Jan. 9, 2023

Appendix A

Comment Period

Aug. 26, 2022 – Nov. 21, 2022

Summary of Comments Received during 45-Day Public Comment Period from August 26, 2022, through November 21, 2022

Note: the responses to the comments below are contained in the Final Statement of Reasons. The applicable response for each comment in this matrix is denoted by the applicable response number. A copy of the submitted written comments and the transcript of the November 17, 2022, public hearing is contained in Tab D of the rulemaking record; the letters and transcript of the public hearing are bracketed to identify the individual comments by the corresponding comment number that is identified below.

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Reclamation District 551	1.1	Potential Modifications to Subventions Program. "The proposed language in Section 5001 could modify the Subventions program and limit funding opportunities for all Districts to perform necessary maintenance and rehabilitation of their levee systems. The definitions, as currently amended, do not support the Delta Subventions Program - a program that already has priorities and structure to balanced funding universally in the Delta." (p 2 of 3).	Response 2.1. Definitions Response 6. Subventions
Reclamation District 551	1.2	Edit to §5001. Definitions. (w) Levee Improvement; "Examples of levee improvements include changing levee geometry to reach a higher level of protection, increasing the height of a levee, providing riprap where none previously existed, and other similar activities." (p 2 of 3).	Response 2.2. Definitions

ATTACHMENT 1 to FINAL STATEMENT OF REASONS

Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

OAL FILE NUMBER 2022-0816-07

<p>Commenter Organization/ Name</p>	<p>Comment Number</p>	<p>Comment Summary</p>	<p>Response Number</p>
<p>Reclamation District 551</p>	<p>1.3</p>	<p>Edit to §5001. Definitions. (x) Levee Operation and Maintenance; "means any activity to retain or maintain or rehabilitate the levee <u>to</u> the intended functions of flood control facilities and of existing encroachments or needed to keep the system functioning properly. Examples of maintenance activities include mowing, tree and bush trimming and removal, revetment restoration, rodent control, spraying, painting, coating, patching, burning, and other similar activities but does not include any significant excavation or any excavation during flood season. <u>This also includes crown and slope repairs to reestablish the existing level of flood protection after damage due to storms or encroachments or levee settlement.</u>" (p 2 of 3).</p>	<p>Response 2.1. Definitions Response 2.2. Definitions Response 2.3. Definitions</p>
<p>Reclamation District 551</p>	<p>1.4</p>	<p>Levee Rehabilitation included in definition of levee O&M. "Levee rehabilitation must be included within the definition of levee O&M. Levees are known to settle throughout the Delta, crowns must periodically be raised to meet the existing level of flood protection that the system provided." (p 2 of 3)</p>	<p>Response 2.3. Definitions Response 2.3. Definitions</p>
<p>Reclamation District 551</p>	<p>1.5</p>	<p>Excavation excluded from Section 5001(x). "Excavation must be excluded from Section 5001 (x) as it often is a part of maintenance. For example, failures of encroachments (such as pipes) have damaged levees, and such failures cannot be adequately repaired without some amount of excavation. " (p 2 of 3)</p>	<p>Response 2.1. Definitions</p>

ATTACHMENT 1 to FINAL STATEMENT OF REASONS

Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

OAL FILE NUMBER 2022-0816-07

<p>Commenter Organization/ Name</p>	<p>Comment Number</p>	<p>Comment Summary</p>	<p>Response Number</p>
<p>Reclamation District 551</p>	<p>1.6</p>	<p>Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. "Furthermore, this prioritization should account for the condition of the levee system of each District. A system is only as good as its weakest links. Investments made in "Very High" districts that are adjacent to districts listed as "Other" will be at risk if the levees within the District considered Other have critical design deficiencies. Each Reclamation District functions as a part of the whole Delta Levee system. Failure of any part of that system has adverse impacts on other parts of the system." <i>(p 3 of 3)</i>.</p>	<p>Response 5. DLIS Methodology</p>
<p>Reclamation District 551</p>	<p>1.7</p>	<p>Request for additional time. "RD 551 requests additional time to coordinate directly with Council staff on the amendment language to support rulemaking and prioritization that reflects all aspects of maintenance and improvement of the system of levees in the Delta." <i>(p 3 of 3)</i>.</p>	<p>Response 3. Request for Increased Coordination</p>
<p>CA Central Valley Flood Control Assoc</p>	<p>2.1</p>	<p>Request of Council staff to work with LMAs and the DPC on amending proposed language. "Before adopting the final regulation, the Association requests the Council authorize the staff to work with Local Levee Maintaining Agencies and the Delta Protection Commission on amendments to the proposed language." <i>(p 1 of 9)</i>.</p>	<p>Response 3. Request for Increased Coordination</p>

ATTACHMENT 1 to FINAL STATEMENT OF REASONS

Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

OAL FILE NUMBER 2022-0816-07

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
CA Central Valley Flood Control Assoc	2.2	Edit to Section 5012(a). State Liability for SPFC Project Levees "The Association encourages the addition of a statement to Section 5012(a) that explicitly prioritizes state investments in operation and maintenance [for Delta levees] in order to reduce state liability and to retain eligibility in federal (USACE/FEMA) levee repair programs." <i>(p 7 of 9).</i>	Response 1. Federal Participation
CA Central Valley Flood Control Assoc	2.3	Edit to §5001. Definitions. This comment is similar to one in comment letter 1.2 which would seek to edit 5001(w) by deleting text in the definition "increasing the height of a levee" as well as to edit 5001(x) by adding "or rehabilitate the levee". The intent is to address non-project levee repair and include such levees under FEMA's Disaster Assistance which may not be recognized because of non-compliance with the HMP standard; "Raising a levee to a higher standard is an improvement, but raising a levee to restore it to its design standard because the soils underneath settled is maintenance. Ensuring eligibility for both the FEMA and USACE levee repair funding by investing in levee maintenance should be a high priority for the State. We recommend changes to these two definitions in order to clarify the Council's intent." <i>(p 7 of 9).</i>	Response 2.1. Definitions Response 2.2. Definitions
CA Central Valley Flood Control Assoc	2.4	Importance of Maintaining Levees. "The DSC must consider the importance of supporting the viability of reclamation districts to continue performing critical levee operation and maintenance, or be prepared to see the Delta devolve into an open water inland sea with higher levels of salinity intrusion." <i>(p 8 of 9).</i>	Response 5. DLIS Methodology

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
CA Central Valley Flood Control Assoc	2.5	Delta Levees Support Reliable Water Supply. "State investment in levee improvements to the armored pathway [levees that provide protection to the water supply via the center corridor of the Delta] should be reflected in Delta Levees Investment Strategy Priorities [as a priority]." <i>(p 8 of 9)</i> .	Response 5. DLIS Methodology
CA Central Valley Flood Control Assoc	2.6	Edit to §5001. Definitions. This comment is the similar to their a previous comment in comment letter comment 2.3 regarding the inclusion of " <i>increasing the height of a levee</i> " in the definition. The comment to which they suggests eliminating it. <i>(p 8 of 9)</i> .	Response 2.1. Definitions Response 2.2 Definitions
CA Central Valley Flood Control Assoc	2.7	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter their comment 2.3. "In addition, the maintenance definition should include the rehabilitation and reconstruction of levees to meet applicable standards of the United State Army Corps of Engineers or criteria developed by the Department of Water Resources for non-project levees pursuant to Water Code section 12984." <i>(p 8 of 9)</i> .	Response 2.1. Definitions Response 2.3. Definitions Response 1. Federal Participation
CA Central Valley Flood Control Assoc	2.8	Limit State liability for SPFC Levees. "Prioritizing State funding for the improvement of state-owned SPFC levees should be a priority in order to reduce the fiscal liability of the State." <i>(p 8 and 9 of 9)</i> .	Response 5. DLIS Methodology Response 1. Federal Participation
CA Central Valley Flood Control Assoc	2.9	Annual Report with a Deadline Date. "The Association supports the requirement for DWR to submit an annual report of state expenditures on Delta levees to DSC, but requests a deadline date for submission be added to section 50012(c). February 1 may be a good option." <i>(p 9 of 9)</i> .	Response 8. Deadline for Annual Report

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CA Central Valley Flood Control Assoc	2.10	Expand Priority for State investment. This comment suggests expanding items included under Table 1 "Other Category" to include an armored freshwater pathway for export; food supply; wetlands created with private, State, and federal funds; and Delta as an evolving place. <i>(p 9 of 9)</i> .	Response 5. DLIS Methodology
CA Central Valley Flood Control Assoc	2.11	Include a Statement to Prioritize O&M. This comment suggests amending section 5012(a) to explicitly declare an important reason for prioritizing State funding for O&M for project and non-project levees is to retain eligibility for USACE and FEMA levee repair funding. <i>(p 9 of 9)</i> .	Response 1. Federal Participation
Delta Farms Reclamation District 2029	3.1	Edit to §5001. Definitions. An overarching comment. "The proposed language in Section 5001 could modify the Subventions program as it currently exists and limit funding opportunities for <u>all</u> Districts to perform necessary maintenance and rehabilitation of their levee systems. The definitions, as currently amended, do not support the Delta Subventions Program - a program that already has priorities and structure to balance funding universally in the Delta. Any proposed rulemaking should align with existing legislation and programs." <i>(p 2 of 3)</i> .	Response 2.1. Definitions Response 6. Subventions
Delta Farms Reclamation District 2029	3.2	Edit to §5001. Definitions. Same as previous comment as comment in comment letter 1.2 regarding edit to "Levee Improvement" definition. <i>(p 2 of 3)</i> .	Response 2.1. Definitions Response 2.2. Definitions
Delta Farms Reclamation District 2029	3.3	Edit to §5001. Definitions. Same as previous comment as in comment letter 1.3 regarding edit to "Levee Operation and Maintenance" definition. <i>(p 2 of 3)</i> .	Response 2.1. Definitions Response 2.3. Definitions

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<p>Commenter Organization/ Name</p>	<p>Comment Number</p>	<p>Comment Summary</p>	<p>Response Number</p>
<p>Delta Farms Reclamation District 2029</p>	<p>3.4</p>	<p>Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1.4 regarding including levee rehabilitation to be included in the definition of O&M. "Levee rehabilitation must be included within the definition of levee operation and management. Levees are known to settle throughout the Delta, crowns periodically must be raised to meet the existing level of flood protection that the system provided." <i>(p 2 of 3).</i></p>	<p>Response 2.1. Definitions Response 2.3. Definitions</p>
<p>Delta Farms Reclamation District 2029</p>	<p>3.5</p>	<p>Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1.3 regarding excluding excavation from the definition. <i>(p 2 of 3).</i></p>	<p>Response 2.1. Definitions</p>
<p>Delta Farms Reclamation District 2029</p>	<p>3.6</p>	<p>Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. This comment is similar to a previous comment in comment letter 1.6 regarding prioritization accounting for conditions of the levee system. "To emphasize Section 5012 (a)(2), ensuring the Delta's physical characteristics are protected, we suggest the proposed prioritization account for the condition of the levee system of each District." <i>(p 2 of 3).</i></p>	<p>Response 5. DLIS Methodology</p>
<p>Delta Farms Reclamation District 2029</p>	<p>3.7</p>	<p>Request for Additional Time. This comment is similar to a previous comment in comment letter 1 regarding the request for RD 2029 to coordinate directly with Council staff on amendment language. <i>(p 3 of 3).</i></p>	<p>Response 3. Request for Increased Coordination</p>
<p>Reclamation District 999</p>	<p>4.1</p>	<p>Potential Modifications to Subventions Program. This comment is similar to a previous comment in comment letter 1 regarding the potential for Section 5001 proposed language to modify the Subventions program. <i>(p 2 of 3).</i></p>	<p>Response 6. Subventions</p>

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Reclamation District 999	4.2	Edit to §5001. Definitions. Same as a comment as in comment letter 1.2 regarding edit to "Levee Improvement" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.2. Definitions
Reclamation District 999	4.3	Edit to §5001. Definitions. Same as a comment as in comment letter 1.3 regarding edit to "Levee Operation and Maintenance" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 999	4.4	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1 regarding levee rehabilitation to be included in the definition of O&M. <i>(p 2 of 3).</i>	Response 2.1. Definitions
Reclamation District 999	4.5	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1 regarding excluding "excavation" from the definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions
Reclamation District 999	4.6	Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. This comment is similar to a previous comment in comment letter 1 regarding prioritization. "It should be the highest priority of the State to ensure that maintenance and rehabilitation can be performed as needed, in order to meet Bulletin 192-82 design standards and maintain eligibility in the PL84-99 program to leverage available federal funding." <i>(p 2 and 3 of 3).</i>	Response 5. DLIS Methodology
Reclamation District 999	4.7	Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. This comment is similar to a previous comment in comment letter 1 regarding prioritization accounting for conditions of the levee system. <i>(p 2 and 3 of 3).</i>	Response 5. DLIS Methodology

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Reclamation District 999	4.8	Request for Additional Time. This comment is similar to a previous comment in comment letter 1 regarding the request for RD 999 to coordinate directly with Council staff on amendment language. <i>(p 3 of 3).</i>	Response 3. Request for Increased Coordination
Reclamation District 2037	5.1	Potential Modifications to Subventions Program. This comment is similar to a previous comment in comment letter 1 regarding the potential for Section 5001 proposed language to modify the Subventions program. <i>(p 2 of 3).</i>	Response 6. Subventions
Reclamation District 2037	5.2	Edit to §5001. Definitions. Same as comment as in comment letter 1.2 regarding edit to "Levee Improvement" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.2. Definitions
Reclamation District 2037	5.3	Edit to §5001. Definitions. Same as comment as in comment letter 1.3 regarding edit to "Levee Operation and Maintenance" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 2037	5.4	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1 regarding including levee rehabilitation in the definition of O&M. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 2037	5.5	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1 regarding excluding "excavation" from the definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions
Reclamation District 2037	5.6	Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. This comment is similar to a previous comment in comment letter 1 regarding prioritization accounting for conditions of the levee system. <i>(p 2 and 3 of 3).</i>	Response 5. DLIS Methodology

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Reclamation District 2037	5.7	Request for Additional Time. This comment is similar to a previous comment in comment letter 1 regarding the request for RD 2037 to coordinate directly with Council staff on amendment language. <i>(p 3 of 3).</i>	Response 3. Request for Increased Coordination
Reclamation District 2044	6.1	Potential Modifications to Subventions Program. This comment is similar to a previous comment in comment letter 1 regarding the potential for Section 5001 proposed language to modify the Subventions program. <i>(p 2 of 3).</i>	Response 6. Subventions
Reclamation District 2044	6.2	Edit to §5001. Definitions. Same as comment as in comment letter 1.2 regarding edit to "Levee Improvement" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.2. Definitions
Reclamation District 2044	6.3	Edit to §5001. Definitions. Same comment as comment in comment letter 1.3 regarding edit to "Levee Operation and Maintenance" definition. <i>(p 2 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 2044	6.4	Edit to §5001. Definitions. Include crown and slope repairs as part of the "Levee operation and maintenance" definition. "This also includes crown and slope repairs to reestablish the existing levee of flood protection after damage due to storms or encroachments or levee settlement." <i>(p 3 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 2044	6.5	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1.4 regarding levee rehabilitation to be included in the definition of O&M. <i>(p 3 of 3).</i>	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 2044	6.6	Edit to §5001. Definitions. This comment is similar to a previous comment in comment letter 1.3 regarding excluding "excavation" from the definition. <i>(p 3 of 3).</i>	Response 2.1. Definitions

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Reclamation District 2044	6.7	Edit to §5012. Prioritization of State Investments in Delta Levees and Risk Reduction. This comment is similar to a previous comment in comment letter 1.6 regarding prioritization accounting for conditions of the levee system. <i>(p 3 of 3).</i>	Response 5. DLIS Methodology
Reclamation District 2044	6.8	Request for additional time. This comment is similar to a previous comment in comment letter 1.7 regarding the request for RD 2044 to coordinate directly with Council staff on amendment language. <i>(p 3 of 3).</i>	Response 3. Request for Increased Coordination
Green Mountain Engineering	7.1	Potential Modifications to Subventions Program. This comment is similar to a previous comment in comment letter 1.1 regarding the potential for Section 5001 proposed language to modify the Subventions program. "These proposed revisions have taken these objectives out of the equation and substituted a list of islands and tracts that were determined, by unknown formulas with incomplete data, to be of highest priorities. The proposed revisions do not fully take into consideration the (lack of) or level of protection that is provided and fails to include the all the specific priorities 'Delta Emergency Preparedness, Response, and Recovery, improvement of non-project Delta levees to the Hazard Mitigation Plan (HMP) and Improvements to a standard above HMP, such as that set by the U.S. Army Corps of Engineers under Public Law 84-99, as befits the benefits to be provided' " <i>(p 1 and 2 of 5).</i>	Response 5. DLIS Methodology Response 6. Subventions
Green Mountain Engineering	7.2	An Alternative of Priorities, Objectives, and Actions. This comment describes a list of alternative priorities, objectives, and actions to the proposed DLIS. <i>(p 2 of 5).</i>	Response 5. DLIS Methodology

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Green Mountain Engineering	7.3	Intent of the Delta Plan. This comment addresses how the proposed alternative to DLIS would meet the goals of the Delta Plan. <i>(p 3 of 5).</i>	Response 5. DLIS Methodology
Green Mountain Engineering	7.4	Request to respond to comments in writing and more coordination. Comment requests that the Council respond in written format to the comments, interested parties be allowed to rebut or supplement, and review other comments of interested parties in writing prior to taking action on rulemaking. <i>(p 4 of 5).</i>	Response 3. Request for Increased Coordination
Local Agencies of the North Delta (LAND)	8.1	Request to pause rulemaking. "LAND requests that the Delta Stewardship Council ("Council") take the time to fully understand the concerns of Delta levee stakeholders before proceeding further in this rulemaking process." <i>(p 1 of 7).</i>	Response 3. Request for Increased Coordination
Local Agencies of the North Delta (LAND)	8.2	Concerns about DLIS Definitions and Priority Matrix. "The rigid priority system could potentially exclude, or make less accessible, funding for islands and tracts from necessary funding, thus endangering lives and businesses across the Delta." <i>(p 1 of 7).</i>	Response 5. DLIS Methodology Response 7. Economics
Local Agencies of the North Delta (LAND)	8.3	Addition to Section 5012(a). "The addition of a statement to Section 5012(a) that explicitly prioritizes state investments in operation and maintenance in order to reduce state liability and to retain eligibility in federal (USACE/FEMA) levee repair programs." <i>(p 2 of 7).</i>	Response 1. Federal Participation

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Committer Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta (LAND)	8.4	Edit to §5001. Definitions. Same comment as previous comments in comment letter 1 .2 and 1.3 regarding edit to "Levee Improvement" and "Levee Operation and Management" definitions. "...to exclude the activity of raising a levee to its pre-existing design standards to ensure eligibility for both the FEMA and USACE levee repair funding in sections 500l(w) and (x)" <i>(p 2 of 7)</i> .	Response 2.1. Definitions Response 2.2. Definitions Response 2.3. Definitions Response 1. Federal Participation
Local Agencies of the North Delta (LAND)	8.5	Annual report with a deadline date. Similar to previous comment as in comment letter 2.9 to add a reporting deadline for reporting by DWR <i>(p 2 of 7)</i> .	Response 8. Deadline for Annual Report
Local Agencies of the North Delta (LAND)	8.6	Delta Levees Support Reliable Water Supply. Similar to previous comment in comment letter as 2 .5 regarding funding prioritization of levee improvements of State interest to secure the State's water supply delivery. <i>(p 2 of 7)</i> .	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	8.7	Potential Modifications to Subventions Program. This comment is similar to a previous comment in comment letter 1 regarding the potential for discouraging investment. "If adopted as they are written, the proposed regulation may have the unintended result of discouraging investment, including disaster assistance in levees on many islands and tracts." <i>(p 2 of 7)</i> .	Response 5. DLIS Methodology Response 1. Federal Participation
Local Agencies of the North Delta (LAND)	8.8	Implementation of the Coequal Goals. This comment asserts implementing the coequal goals requires sustaining the entire levee system and not creating priorities. <i>(p 2 of 7)</i> .	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	8.9	Office of Administrative Law Review. This comment states that LAND provided comments on the proposed regulations which OAL must review the proposed regulations using standards defined by Gov. Code, § 11349.1 subd. (a). <i>(p 3 of 7)</i> .	Response 4.2. Authority

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta (LAND)	8.10	Proposed Regulations do not meet Authority and Consistency Standards. This comment details the standards for authority and consistency, and clarity under the Administrative Procedure Act and its regulations. It states that the proposed regulations do not meet the standards because the proposed rulemaking exceeds the Council’s statutory authority. Essentially, the commenter asserts that the CCR requires directs the Council to recommend priorities, but does not provide the authority to codify the proposed regulations. "The statutory direction to recommend priorities does not provide the Council with the authority to codify the proposed tiered priority matrix as a regulation." <i>(p 4 and 5 of 7).</i>	Response 4.2. Authority
Local Agencies of the North Delta (LAND)	8.11	Proposed Regulations limit DWR flexibility. This comment states that the prioritization is too rigid and redirects funds to projects that have other funding sources. "This shift in funds would likely create more liability for local agencies and the State due to an inability to maintain acceptable engineering standards at these nonproject and nonurban levees." <i>(p 5 and 6 of 7).</i>	Response 5. DLIS Methodology Response 7. Economics
Local Agencies of the North Delta (LAND)	8.12	Proposed Regulations do not meet Clarity Standard. This comment details the California Code of Regulations standards for clarity and states that the proposed regulations are unclear. For example, it is unclear whether either "Levee improvement" or "Levee operation and maintenance" would cover repair and rehabilitation work to maintain levees to standards in DWR Bulletin 192-82 and U.S. Army Corps of Engineers PL 84-99. It is unclear whether this type of work falls within the definition of either phrase." <i>(p 6 of 7).</i>	Response 4.2. Authority

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta (LAND)	8.13	Economic Analysis is Inadequate. This comment states that the economic analysis is inadequate and fails to provide "the tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner." <i>(p 6 of 7).</i>	Response 7. Economics
Local Agencies of the North Delta (LAND)	8.14	Economic Analysis Missing Information. This comment states that the "The 'Citations List' at the end of the document does not appear to correspond to the footnotes or endnotes". The referenced text appears to be missing. <i>(p 6 of 7).</i>	Response 9. Modified Economic and Fiscal Impact Assessment
Local Agencies of the North Delta (LAND)	8.15	Request for additional time. This comment is similar to a previous comment in comment letter 1 regarding the request for continued coordination with stakeholders on amendment language. <i>(p 7 of 7).</i>	Response 3. Request for Increased Coordination
Central Delta Water Agency	9.1	Request of Council staff to work with LMAs and the DPC on amending proposed language. Same as previous comment in comment letter 2 regarding continued coordination. <i>(p 1 of 11).</i>	Response 3. Request for Increased Coordination
Central Delta Water Agency	9.2	Impact of Proposed Regulation. Comment states the proposed regulation will unnecessarily discourage investment in levee maintenance. "The result will likely be the inability to sustain levees critical to the preservation of the legal Delta. The adverse consequences of failing to sustain the Delta levees will be huge, not only to the Delta and related infrastructure, but to the ability to control salinity intrusion, supply water to the region and other areas of the State and maintain already inadequate emergency evacuation routes for the region." <i>(p 1 of 11).</i>	Response 7. Economics Response 1. Federal Participation

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.3	Importance of Maintaining Levees. Same comment as a previous comment in comment letter 2.4 regarding sustaining Delta levees. "Disrupting the current programs such that funding will only be directed toward sustaining a segment of the levees without accounting for the relevance of the levees to preserving and enhancing the Delta is not an appropriate strategy." <i>(p 2 of 11)</i> .	Response 5. DLIS Methodology
Central Delta Water Agency	9.4	Focus of Proposed Regulation on All Delta Levees. "...recommendations on priorities for levee investments in the Delta should not be tied to islands or tracts or segments of the levee system but should be based on the objectives to be achieved including improving to an adequate engineering standard for all those levees which are needed to protect the unique cultural, recreational, natural resources and agricultural values of the Delta." <i>(p 2 and 3 of 11)</i> .	Response 5. DLIS Methodology

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.5	An Alternative of Priorities, Objectives, and Actions. This comment describes an alternative to the proposed DLIS and continue with the current process focused on achieving levee standards for all Delta levees. "The proposed regulation with the designation of priorities based on islands and tracts and imperfect ratings from the new model is an unwise strategy and lacks factual support. Delta levees that do not yet meet the minimum engineering levee standards should not be prematurely precluded from State funding. The priority for investment should as in the past be by setting the amount of funding allocated to each levee program and the objectives to be achieved within such programs and not by way of exclusion or sacrifice of portions of the Delta Levee System." <i>(p 3 of 11).</i>	Response 5. DLIS Methodology
Central Delta Water Agency	9.6	Edit to §5001. Definitions. This comment states that priorities should not be based on the proposed purposes and objectives and the table should be eliminated. "Priorities based on islands and tracts rather than purposes and objectives should be eliminated." <i>(p 4 of 11).</i>	Response 5. DLIS Methodology
Central Delta Water Agency	9.7	Edit to §5001. Definitions. This comment states what should not be considered a levee improvement and proposes an intent of the definition. "'Levee improvement' means any activity that is not 'Levee operation, maintenance, repair, rehabilitation and replacement', and that is intended to reduce the probability of flooding to facilitate change in land use or the addition of a feature that did not previously exist." <i>(p 4 of 11).</i>	Response 2.1., and 2.3 Definitions

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Central Delta Water Agency	9.8	Edit to §5001. Definitions. This comment expands the terms to define beyond the "Levee Operation and Maintenance" definition, expands or clarifies the type of work, and proposes that the Delta levee system be preserved. "'Levee operation, maintenance, repair, rehabilitation and replacement' means levee work intended to preserve the Delta levee system and the Delta's physical characteristics in essentially their present form (Water Code Section 12981, Stats. 1973, c. 717)." <i>(p 4 and 5 of 11).</i>	Response 2.1. Definitions Response 2.3. Definitions
Central Delta Water Agency	9.9	Edit to §5001. Definitions. This comment proposes to clarify State funding. "Funding for 'Levee operation, maintenance, repair, rehabilitation and replacement' as defined above shall continue to be available throughout the Delta where authorized by Water Code section 12980 et seq. and 12310 et seq. or any other program subject to appropriation for program funding by the legislature." <i>(p 5 of 11).</i>	Response 2.1. Definitions Response 2.3. Definitions Response 4.3. Authority Response 4.4. Authority Response 5. DLIS Methodology
Central Delta Water Agency	9.10	Edit to §5001. Definitions. This comment proposes to clarify State funding. "Funding for 'Levee Improvement' shall be subject to specific project funding after consultation with and recommendation from the Delta Stewardship Council." <i>(p 5 of 11).</i>	Response 5. DLIS Methodology Response 6. Subventions
Central Delta Water Agency	9.11	Continue Current Delta Levee Programs with No Changes. This comment suggests that no changes are needed to the current Delta levee programs. "The current Delta levee programs managed by DWR and the CVFPB have been working and should not be dismantled. The effort should be directed at reducing unnecessary requirements and more efficiently getting dollars into levee objectives." <i>(p 5 of 11).</i>	Response 4.3. Authority

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Central Delta Water Agency	9.12	Proposed Regulations Contrary to WC 12981. This comment states that the proposed regulations fail to preserve the physical characteristics of the Delta and do not promote agriculture and habitat as State interests. "Contrary to the Legislature's findings and declarations in WC 12981 the proposed regulations fail to include preservation of the physical characteristics of the Delta and promotion of agriculture and habitat as a State interest and purpose of funding." (p 5 of 11).	Response 4.3. Authority
Central Delta Water Agency	9.13	Proposed Regulations Favor Urban Use. This comment contends that the proposed regulations favor urban use over agriculture. "The proposed regulations would greatly favor urban use to the detriment of agriculture and ignore the predominant need to preserve the physical characteristics of the delta." (p 6 of 11).	Response 5. DLIS Methodology
Central Delta Water Agency	9.14	Proposed Regulations are Inconsistent with the Coequal Goals. This comment states that the proposed regulations are inconsistent with WC 85054. (p 6 of 11).	Response 5. DLIS Methodology
Central Delta Water Agency	9.15	Proposed Regulations Impede Funding. This comment states that the proposed regulations would impede funding and reduce water supply reliability. "Additionally, the proposed impediment to funding Delta levee improvement will greatly reduce the reliability of the water supply in the Delta for California including in Delta needs, exports and those downstream of the delta." (p 6 of 11).	Response 5. DLIS Methodology

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.16	Proposed Regulations Mix Funding of Different Types of Levee Projects. This comment states that the proposed regulations conflate funding for different types of levee project improvements. "The proposed regulations have unnecessarily lumped together the funding for urban federal project levee improvements and Delta program levee improvements." <i>(p 6 of 11)</i> .	Response 5. DLIS Methodology
Central Delta Water Agency	9.17	Proposed Regulations Not Authorized to Regulate. This comment states that the proposed regulations overstep the Council's authority because they will mandate rather than recommend priorities. "The proposed regulations seek to mandate that the Department of Water Resources follow the DSC priorities and provide justifications for any deviations." <i>(p 8 of 11)</i> .	Response 4.1. Authority
Central Delta Water Agency	9.18	Proposed Regulations Will Jeopardize Federal Disaster Assistance. This comment is similar to a previous comment in comment letter 2 regarding status of levees under federal programs and the ability for Delta levees to receive federal disaster assistance. "The proposed regulations exclude "maintenance" from the mandated priorities but define "maintenance" to exclude levee rehabilitation and improvement which is necessary to meet minimum acceptable levees to receive federal disaster assistance to restore public facilities after a flood emergency." <i>(p 8 and 9 of 11)</i> .	Response 1. Federal Participation

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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<p>Commenter Organization/ Name</p>	<p>Comment Number</p>	<p>Comment Summary</p>	<p>Response Number</p>
<p>Central Delta Water Agency</p>	<p>9.19</p>	<p>Inclusion of Urban Areas Already Being Improved as Very High Priority. This comment is in regards to specific areas such as North Stockton, Central Stockton, RD 17, and West Sacramento, which are currently undergoing improvements, but are listed as Very High Priority and would be prioritized to receive funding. "These areas are not in the primary zone of the Delta and are urbanized. These future levee improvements are not eligible for funding through the Delta Levee Subvention Program or the Delta Special Project Program." (p 9 of 11).</p>	<p>Response 5. DLIS Methodology</p>
<p>Central Delta Water Agency</p>	<p>9.20</p>	<p>Estimated Annual Damage Methodology does not Account for the Delta Levee System as a Whole. This comment is similar to a previous comment in comment letter 1 regarding the importance of acknowledging that all of the Delta levees work together as a system. "The Estimated Annual Damage (EAD) methodology does not take into account the system impacts and impacts to the physical characteristics of the Delta. The annualized cost of repair of a levee break, dewatering and repair of the flooded area levees does not account for the damage to surrounding levees, land, crops and improvements, the ongoing detrimental impacts such as to water quality, water supply, human health and safety, recreation and wildlife and secondary impacts such as those to safe evacuation, supporting businesses such as trucking, equipment sales and services, construction companies, impacts to residents and to workers both on and off the flooded land and for cumulative impacts such as reflected in the DRMS estimate of billions of dollars to replace damaged infrastructure." (p 10 of 11).</p>	<p>Response 5. DLIS Methodology</p>

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.21	Outdated Land Values Contribute to Reduced Land Values. This comment states that the economic analysis used outdated land values. "Reduction in land value due to an annualized cost of flooded island restoration appears to use outdated values for Delta lands." <i>(p 10 of 11).</i>	Response 7. Economics
Central Delta Water Agency	9.22	DLIS Support Tool Does Not Account for Adverse Impacts. This comment states that many adverse impacts of increased risk of flooding are not accounted for in the support tool. "The Delta Stewardship Council Decision Support Tool for the Bay-Delta Levee Investment Strategy does not account for many of the adverse impacts of increasing the risk of flooding other than in the highest priority and therefore incorrectly diminishes the benefit of reduction of flood risk from levee improvement to the other levees." Comments 9.25 through 9.32 are sub comments to this comment. <i>(p 10 of 11).</i>	Response 5. DLIS Methodology
Central Delta Water Agency	9.23	No Accounting of the Risk of Life for Traveling Into Areas. This comment states that there was no accounting of the risk of life for people traveling to work in areas or trying to evacuate other areas. "The risk to life only accounts for population residing in the area and not for those traveling through the area or those working in the area or those trying to evacuate other areas and are stranded by the flooding of the road or highway on the flooded island." <i>(p 10 of 11).</i>	Response 5. DLIS Methodology

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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<p>Commenter Organization/ Name</p>	<p>Comment Number</p>	<p>Comment Summary</p>	<p>Response Number</p>
<p>Central Delta Water Agency</p>	<p>9.24</p>	<p>Protecting Water Supply Issues. This comment highlights the proposed regulation does not include islands that protect water supply in the North Delta, does not include the loss of fresh water due to increased evaporation or water quality, and does not include impacts from salinity intrusion. "Important Islands for Protecting Water Supply does not include Islands north of the San Joaquin River along the conveyance route from the Delta cross channel or the mouth of Georgiana Slough to the export facilities in the South Delta or those of the City of Stockton diversion on Empire Tract. Also not included is the loss of fresh water due to increased evaporation, or the adverse impact to water quality from increased concentration of salts, methyl mercury, algae related toxins, increased water temperature and contaminants from the land, equipment, and fuel storage on the flooded area. Induced salinity intrusion from the increased tidal prism or change in Delta hydraulics is also left out." <i>(p 10 of 11)</i>.</p>	<p>Response 5. DLIS Methodology</p>
<p>Central Delta Water Agency</p>	<p>9.25</p>	<p>Ignored Value of Farmland, Infrastructure, and Habitat. The comment states the proposed regulations does not value farmland, infrastructure, and habitat under the category Risk to High-Value Non-Habitat. "Risk to High-Value Non-Habitat ignores the value of the farmland, ditches, canals and trees to terrestrial species, some of which are endangered, and ignores the acreage of farmland which is flooded in the winter and provides critical wintering forage for the waterfowl of the Pacific Flyway." <i>(p 10 of 11)</i>.</p>	<p>Response 5. DLIS Methodology</p>

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.26	Ignored Local Roads in Delta as a Place Public Roadways. The comment states that local roads were ignored in the proposed regulation evaluation. "Delta as a Place Public Roadways ignores the local roads in much of the Delta which serve areas other than the particular Island or Tract on which they are located and ignores the threat to roads from the flooding of adjoining areas causing seepage into the land and levees where the road is located and wind waves breaking through the flooded area levees." <i>(p 10 of 11)</i> .	Response 5. DLIS Methodology
Central Delta Water Agency	9.27	Outdated Land Values Contribute to Reduced Land Values. This comment is similar to a previous comment in comment letter 9 regarding the use of outdated land values. <i>(p 11 of 11)</i> .	Response 7. Economics
Central Delta Water Agency	9.28	Substantially Different Probability of Flooding Used. This comment highlights that DWR projections for the probability of flooding were different than what was used. <i>(p 11 of 11)</i> .	Response 5. DLIS Methodology
Central Delta Water Agency	9.29	Inclusion of Urban Areas Already Being Improved as Very High Priority. This comment is similar to a previous comment in comment letter 9 regarding the inclusion of urban levee areas outside the Primary Zone such as RD 17, West Sacramento, and Maintenance Area 9 South. "The inclusion of urban levee areas outside the Primary Zone into the Very High Priority and into the economic analysis has distorted the result." <i>(p 11 of 11)</i> .	Response 5. DLIS Methodology
Central Delta Water Agency	9.30	Economic Analysis Does Not Include Cumulative Impact to Infrastructure. This comment states the analysis did not account for cumulative impacts to infrastructure that was suggested in the DRMS study. <i>(p 11 of 11)</i> .	Response 7. Economics

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	9.31	Proposed Amendment Shifts Funding from Areas of Greatest Need to Areas Already Funded. This comment states that the proposed regulation shifts funds from potential flooded areas with significant adverse impacts to areas which have other funding sources. "The Delta levee programs have been directed at the nonproject and nonurban areas within the primary zone of the Delta. These areas are restricted as to development, have the lowest ability to pay and the greatest risk. The flooding of these areas will have significant adverse impacts on the residents, landowners, recreation, habitat and businesses that will not be replaced with the funding shifted to other areas." (p 11 of 11).	Response 5. DLIS Methodology
Delta Protection Commission	10.1	Prioritization scheme fails to acknowledge importance of all levees to protect the Delta and achieve coequal goals. The commission supports improving all levees to DWR Bulletin 192-82 standard.	Response 5. DLIS Methodology
Delta Protection Commission	10.2	The Commission supports the improvement of most "lowland" levees to a higher Delta-specific standard.	Response 5. DLIS Methodology
Delta Protection Commission	10.3	Edit to §5001. Definitions. This comment is similar to previous comments regarding levee rehabilitation to be included in the definition of O&M.	Response 2.1. Definitions Response 2.3. Definitions
Delta Protection Commission	10.4	Revise definition of levee operation and maintenance in the regulation to include levee rehabilitation to ensure that activities under the Subventions Program are not subject to the DLIS prioritization scheme.	Response 2.1. Definitions Response 2.3. Definitions Response 6. Subventions
Local Agencies of the North Delta	11.1	Substantively addressing public comments prior to finalizing the proposed regulation is critical to the success of both DLIS and larger flood planning and control efforts in the Delta.	Response 3. Request for Increased Coordination

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta	11.2	Request that DLIS be put on the Council's agenda in December for an update and allow for further public comment.	Response 3. Request for Increased Coordination
MBK Engineers	12.1	"Language should be included in the DLIS that specifies that the Delta Levees Subventions Program will not be impacted by the proposed rulemaking and regulations."	Response 6. Subventions
MBK Engineers	12.2	The rulemaking should identify and seek to add language to support investment in non-project levees with the goal of meeting the Bulletin 192-82 design standard.	Response 5. DLIS Methodology
MBK Engineers	12.3	Any programs and grants that support funding projects to regain and maintain PL 84-99 active status should be exempt from the proposed investment strategy due to the critical importance of the federal funding opportunity to support both state and local agencies.	Response 1. Federal Participation Response 5. DLIS Methodology
MBK Engineers	12.4	Hydraulically connected and/or consolidated districts should have the same priority.	Response 5. DLIS Methodology
CDWA	13.1	Request clarification regarding why the Council is invoking the Rulemaking processed to implement its recommendations for priorities for State investments in levees.	Response 4. 1. Authority
CDWA	13.2	"The Council's authority over priorities for State investments in levees is limited to making recommendations; The Council lacks authority to adopt regulations that make those priorities mandatory	Response 4.1. Authority Response 4.4. Authority
CDWA	13.3	If the Council is intent on making the DLIS recommendations into enforceable recommendations mandatory upon all state entities with authority to make investments in levees, the rulemaking process must be halted at once.	Response 4. 1. Authority

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

OAL FILE NUMBER 2022-0816-07

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
River Delta Consulting	14.1	The priority rankings listed in Table 1 (and Appendix P) should be discussed and data disclosed specifying how the islands were ranked since they include obvious discrepancies (list presented). The interrelation between islands should be reviewed more extensively.	Response 5. DLIS Methodology
River Delta Consulting	14.2	All islands with extensive habitat are not ranked the same. "A more extensive evaluation of existing habitat and the levees needed to continue protecting this habitat (which has required significant investment to create) should be conducted."	Response 5. DLIS Methodology
River Delta Consulting	14.3	All levees should be kept up equally to avoid a "domino effect" taking out farmland and destroying the Delta economy.	Response 5. DLIS Methodology
River Delta Consulting	14.4	If levees in the "armored pathway" are not kept up and a failure occurs, freshwater exports are threatened.	Response 5. DLIS Methodology
River Delta Consulting	14.5	Important State benefits are not fully evaluated. Attached 2012 DWR report "Background/Reference Memorandum, Delta Region, Integrated Flood Management, Key Considerations and Statewide Implications."	Response 5. DLIS Methodology
Green Mountain Engineering	15.1	Current system (IFM objectives and priorities) has worked well in the past and should continue without a specific levee priority system.	Response 4.3. Authority
Green Mountain Engineering	15.2	"The existing funding priorities seem to be working fine. Are there some regrets that the Delta Stewardship is concerned about with the previous funding commitments?"	Response 4.3. Authority

Comments Received at the November 17, 2022, Public Hearing

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Reclamation District 2023	16.1.1	Presumptions, or assumptions and approach to prioritizing levee investments in the Delta were unfixable from the beginning, perhaps because of the approach.	Response 5. DLIS Methodology
Reclamation District 2023	16.1.2	Request to suspend rulemaking.	Response 3. Request for Increased Coordination
Reclamation District 2023	16.1.3	Need to see the levees in person to understand their complex nature. Asks that the Council come out for a field visit.	Response 3. Request for Increased Coordination
CDWA	16.2.4	Agrees with the intent to prioritize levee investments.	Response 10. Comments Expressing Support of Proposed Regulation
CDWA	16.2.5	Does not agree with the current attempt at prioritizing.	Response 5. DLIS Methodology
CDWA	16.2.6	Believed that Council's prior direction to staff was to come to an agreement with local agencies, but staff didn't indicate that that was their direction, so common ground wasn't reached.	Response 3. Request for Increased Coordination
CDWA	16.2.7	The Delta is a system, and you cannot quantify the impacts of flooding through a model.	Response 5. DLIS Methodology
CDWA	16.2.8	The problem with the prioritization is that it doesn't make getting all levees up to an acceptable design standard the goal.	Response 5. DLIS Methodology
CDWA	16.2.9	Urban and rural levees should not be lumped together in the prioritization.	Response 5. DLIS Methodology
CDWA	16.2.10	The definition of improvement precludes levee rehabilitation activities that need to be done in order to maintain flood protection.	Response 2.1. Definitions Response 2.3. Definitions

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
CDWA	16.2.11	The prioritization may threaten federal participation in post-disaster recovery.	Response 1. Federal Participation
Green Mountain Engineering	16.3.12	DWR has priorities for levee investments and DWR's system has been working well. This regulation is not necessary.	Response 4.3. Authority
Green Mountain Engineering	16.3.13	Urban and rural levees should not be lumped together in the prioritization.	Response 5. DLIS Methodology
Green Mountain Engineering	16.3.14	Spending should not be moved from rural levee to urban levees.	Response 5. DLIS Methodology
Department of Water Resources	16.4.15	Supports the prioritization and the value placed on operations and maintenance.	Response 10. Comments Expressing Support of Proposed Regulation
Randi Fiorini	16.5.16	It's time to make the prioritization a regulation, there will always be someone there to criticize it	Response 10. Comments Expressing Support of Proposed Regulation
Randi Fiorini	16.5.17	DLIS is not in conflict with past practices. It will simply require more accountability and transparency for state funding.	Response 5. DLIS Methodology Response 10. Comments Expressing Support of Proposed Regulation
River Delta Consulting	16.6.18	Definitions need adjustment.	Response 2.1. Definitions Response 2.3. Definitions
River Delta Consulting	16.6.19	The prioritization does not advance the co-equal goals.	Response 5. DLIS Methodology
River Delta Consulting	16.6.20	The armored pathway was not included in the islands that are important to water supply.	Response 5. DLIS Methodology
River Delta Consulting	16.6.21	The methodology did not consider all the habitat that the levees in the Delta protect.	Response 5. DLIS Methodology

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
River Delta Consulting	16.6.22	The prioritization does not reflect that the Delta levees are a system that protect Delta as Place. The agricultural economy supports the levees that support the system. If you lose too many islands the whole system will fail.	Response 5. DLIS Methodology Response 7. Economics
River Delta Consulting	16.6.23	Working with staff has been very fruitful and I hope that continues; there is validity in what you have done so far, but the risk based ranking is not the appropriate way to proceed.	Response 5. DLIS Methodology
Reclamation District 999	16.7.24	Main concern is the prioritization.	Response 5. DLIS Methodology
Reclamation District 999	16.7.25	Being able to rehabilitate levees to maintain PL 84-99 eligibility is critical.	Response 1. Federal Participation
Reclamation District 999	16.7.26	The proposed definitions do not adequately reflect what levee maintenance, rehabilitation and improvement are.	Response 2.1. Definitions Response 2.3. Definitions
Reclamation District 999	16.7.27	The proposed regulation will interfere with the Council's ability to achieve the co-equal goals.	Response 5. DLIS Methodology
Reclamation District 999	16.7.28	The definitions can improved with more discussion.	Response 3. Request for Increased Coordination
Delta Protection Commission	16.8.29	Work completed under the subventions program should be excluded from the prioritization.	Response 6. Subventions
Delta Protection Commission	16.8.30	All levees should be brought up to the PL 84-99 standard.	Response 5. DLIS Methodology
Delta Protection Commission	16.8.31	The Delta levees are a system. The focus should be on bringing all levees up to standard before you target specific areas.	Response 5. DLIS Methodology
MBK Engineers	16.9.32	Commends the Council on making O&M the highest priority.	Response 10. Comments Expressing Support of Proposed Regulation

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
MBK Engineers	16.9.33	Preventing levee failures should be the first goal.	Response 5. DLIS Methodology
MBK Engineers	16.9.34	Adjustments to the definitions are necessary to allow reclamation districts to perform their essential duties.	Response 2.1. Definitions Response 2.3. Definitions
MBK Engineers	16.9.35	Requests that increasing levee height be removed from the improvement definition.	Response 2.2 Definitions
MBK Engineers	16.9.36	Requests that excavation be removed from maintenance definition.	Response 2.1 Definitions
MBK Engineers	16.9.37	Rehabilitation should be added to the maintenance definition.	Response 2.1 Definitions Response 2.3. Definitions
MBK Engineers	16.9.38	Funding should be made available to all districts to improve levees to the Bulletin 192-82 standard.	Response 5. DLIS Methodology
MBK Engineers	16.9.39	Encourage the Council staff to work with Reclamation Districts to achieve system integrity levee improvement goals.	Response 3. Request for Increased Coordination
Tom Zuckerman	16.10.40	The Council lacks authority to regulate Delta Levee funding.	Response 4.1. Authority
Tom Zuckerman	16.10.41	The Delta levees are a system.	Response 5. DLIS Methodology
Tom Zuckerman	16.10.42	The proposed regulation will interfere with DWR's progress to reduce Delta levee failures by directing money in only certain directions.	Response 5. DLIS Methodology
Tom Zuckerman	16.10.43	Rulemaking should be suspended.	Response 3. Request for Increased Coordination
Tom Zuckerman	16.10.44	Questions the Council's authority to regulate Delta levee priorities.	Response 4.1. Authority
Tom Zuckerman	16.10.45	The proposed regulation does not align with the goals of Delta residents and stakeholders.	Response 5. DLIS Methodology

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Tom Zuckerman	16.10.46	If McDonald Island, Mandeville Island, Terminus Tract, or Rindge Tract failed it would be a disaster that would affect the whole Delta.	Response 5. DLIS Methodology
Tom Zuckerman	16.10.47	The entire non-urban Delta should be brought up to the Bulletin 192-82 standard.	Response 5. DLIS Methodology
Central Delta Water Agency	16.11.48	Supports the concerns that have already been expressed.	Response 10. Comments Expressing Support of Proposed Regulation
Central Delta Water Agency	16.11.49	The first priority should be bringing all the Delta levees up to a minimum engineering standard.	Response 5. DLIS Methodology
Central Delta Water Agency	16.11.50	The Delta levees are a system and all islands and tracts need to be improved.	Response 5. DLIS Methodology
Central Delta Water Agency	16.11.51	The co-equal goals cannot be achieved without investment in all Delta levees.	Response 5. DLIS Methodology
Central Delta Water Agency	16.11.52	First priority needs to be bringing up all Delta islands and tracts to a basic engineering standard, once that's achieved, you can prioritize improvements beyond that.	Response 5. DLIS Methodology
Central Delta Water Agency	16.11.53	Council staff should continue to work with Delta interests to develop a priority system that makes sense and does not abandon the values that the Council has a duty to protect.	Response 3. Request for Increased Coordination
Central Delta Water Agency	16.11.54	Rulemaking should be suspended.	Response 3. Request for Increased Coordination
Local Agencies of the North Delta (LAND)	16.12.55	There are still issues that need to be resolved before the rulemaking should be finished.	Response 3. Request for Increased Coordination

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta (LAND)	16.12.56	Rulemaking should be suspended.	Response 3. Request for Increased Coordination
Local Agencies of the North Delta (LAND)	16.12.57	The levees are a system, and the new Councilmembers need time to see the system themselves.	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	16.12.58	Water Code 85306 does not require the Council to make a three-tiered system, the Council was told to recommend priorities, but getting to a minimum engineering standard is very important.	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	16.12.59	The freshwater pathway is not identified as a priority.	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	16.12.60	The definitions need to be changed so that levee repair/rehabilitation is not categorized as an improvement.	Response 2.1. Definitions Response 2.3. Definitions
Local Agencies of the North Delta (LAND)	16.12.61	A static prioritization list cannot be responsive to a dynamic system.	Response 5. DLIS Methodology
Local Agencies of the North Delta (LAND)	16.12.62	Need to ensure that the prioritization does not interfere with the ability to participate in federal programs.	Response 1. Federal Participation
Local Agencies of the North Delta (LAND)	16.12.63	Economic analysis didn't adequately address all the economic impacts. The regulation is a major regulation, not a minor regulation.	Response 7. Economics

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Local Agencies of the North Delta (LAND)	16.12.64	Economic analysis was missing footnotes.	Response 9. Modified Economic and Fiscal Impact Assessment
Local Agencies of the North Delta (LAND)	16.12.65	Rulemaking should be suspended.	Response 3. Request for Increased Coordination
Central Valley Flood Control Association	16.13.66	Rulemaking should be suspended.	Response 3. Request for Increased Coordination
Central Valley Flood Control Association	16.13.67	Levees are a system and the failure of one would have impacts the surrounding islands and tracts.	Response 5. DLIS Methodology
Central Valley Flood Control Association	16.13.68	The prioritization is missing the State interest of maintaining a good standing in the Army Corps of Engineers PL 84-99 program which pays 100 percent of repair costs if a levee is damaged.	Response 5. DLIS Methodology, Federal Participation
Central Valley Flood Control Association	16.13.69	Prioritization does not account for levees along the armored pathway that are critical for water supply.	Response 5. DLIS Methodology
Central Valley Flood Control Association	16.13.70	Some islands and tracts in the North Delta are in the "other" category. This is not consistent with the Central Valley Flood Protection Plan.	Response 5. DLIS Methodology
Central Valley Flood Control Association	16.13.71	The State should prioritize improving the rural levee to the Bulletin 192-82 standard, which is what's called for in statute. Some islands and tracts should maybe be improved beyond that.	Response 5. DLIS Methodology

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Appendix A: Summary of Comments Received during Public Comment Period from August 26, 2022, through November 21, 2022

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Valley Flood Control Association	16.13.72	Reducing potential liability for project levee failures should be incorporated into the State interests considered in the prioritization.	Response 1. Federal participation
Central Valley Flood Control Association	16.13.73	The definitions do not conform with current programs and practices in the Delta.	Response 2.1. Definitions Response 2.3. Definitions
Central Valley Flood Control Association	16.13.74	Consider adding a due date for the Department of Water Resources report.	Response 8. Modified Proposed Regulation

Appendix B

Comment Period

Dec. 15, 2022 – Jan. 9, 2023

Summary of Written and Oral Comments Received during 15-Day Public Comment Period from December 15, 2022, through January 9, 2023

Note: the responses to the comments below are contained in the Final Statement of Reasons. The applicable response for each comment in this matrix is denoted by the applicable response number. A copy of the submitted written comments and the transcript of the November 17, 2022, public hearing is contained in Tab D of the rulemaking record; the letters and transcript of the public hearing are bracketed to identify the individual comments by the corresponding comment number that is identified below.

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
CVFCA and LAND	17.1	Proposed edit to §5001. Definitions.	Response 2.1. Definitions
CVFCA and LAND	17.2	Concerned DSC going ahead without conducting serious inquiry. (Not subject to comment)	Response 3. Request for Increased Coordination
CVFCA and LAND	17.3	restarting the rulemaking clock, request workshop. (Not subject to comment)	Response 3. Request for Increased Coordination
CVFCA and LAND	17.4	Halt rulemaking. (Not subject to comment)	Response 3. Request for Increased Coordination
River Delta Consulting	18.1	Proposed edit to §5001. Definitions.	Response 2.1 Definitions
River Delta Consulting	18.1	Prioritization system is faulty. (Not subject to comment)	Response 5. DLIS Methodology
Delta Protection Commission	19.1	Proposed edit to §5001. Definitions.	Response 2.1 Definitions
Delta Protection Commission	19.2	Potential to jeopardize state and federal funding to agencies and RDs maintaining levees. (Not subject to comment)	Response 1. Federal Participation

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Appendix B: Summary of Comments Received during Public Comment Period from December 15, 2022, through January 9, 2023

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Delta Protection Commission	19.3	Prioritization fails to recognize interconnected system. (Not subject to comment)	Response 5. DLIS Methodology
Delta Protection Commission	19.4	Terminate or stall rulemaking process for further dialog. (Not subject to comment)	Response 3. Request for Increased Coordination
Central Delta Water Agency	20.1	Failure of staff to understand risks adding to deficiencies in model and strategy. (Not subject to comment)	Response 5. DLIS Methodology Response 3. Request for Increased Coordination
Central Delta Water Agency	20.2	If not satisfactorily changed, we ask that the current regulatory process to be terminated and staff and board members be allowed and staff directed to join local stakeholders in field visits to the levees to better understand the interrelationships and perhaps improve the model and strategy" (Not subject to comment)	Response 3. Request for Increased Coordination
Central Delta Water Agency	20.3	All levees should achieve at least FEMA 1983 standards first, the model is a work in progress that fails to incorporate the interrelationship of the levees, "the economic justification for the proposed regulation appears to ignore the real consequences of the proposed strategy", The consequences of a strategy of abandonment of segments of the complex flood control system is at best reckless." (Not subject to comment)	Response 5. DLIS methodology Response 7. Economics
Central Delta Water Agency	20.4	"The proposed investment strategy clearly creates a weighty disincentive to protection and enhancement of the Delta and jeopardizes federal disaster and restoration assistance." (Not subject to comment)	Response 1. Federal Participation

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Appendix B: Summary of Comments Received during Public Comment Period from December 15, 2022, through January 9, 2023

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Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
Central Delta Water Agency	20.5	"Monitoring expenditures is appropriate and a joint effort including the State, federal and local entities in guiding levee funding recommendations should be tried before continuing with the current regulatory effort. The current Delta Levee and Habitat Advisory Committee could be structured for such a task. Flood protection is a huge challenge and a partnership effort of State, federal and local entities is a worthwhile alternative. The joint effort can perhaps build off the past success and if necessary, the Delta Plan can be amended." (Not subject to comment)	Response 3. Request for Increased Coordination
Reclamation District 2023	21.1	"DLIS requires substantive reformation and revision." "As written DLIS will be an impediment for RD 2023 to achieve an acceptable engineering standard and continue the operation, maintenance, and rehabilitation necessary to maintain the historical level of protection for our District and avoid impacts to surrounding Reclamation Districts, landowners and infrastructure" (Not subject to comment)	Response 5. DLIS Methodology
Reclamation District 2023	21.2	Staff has unnecessarily directed the Council that the formal rulemaking process is needed for the Council to make their recommendations on a levee investment strategy, preventing stakeholder engagement, the year limit for rulemaking process is not a must, current policies for allocation of funding remain in place and cause no harm. (Not subject to comment)	Response 3. Request for increased Coordination
Reclamation District 2023	21.3	"To reiterate: RD 2023 (Venice Island) invites and encourages the Council to come stand on our levees and discuss with our landowners the stark realities of maintaining a levee system in the tidal environment that is the Sacramento-San Joaquin River Delta. RD 2023 (Venice Island) remains opposed to the adoption of DLIS in its current form, and requests the council suspend or terminate the rulemaking process and approach the DLIS effort from a more cohesive and collaborative paradigm." (Not subject to comment)	Response 3. Request for increased Coordination

ATTACHMENT 1 to FINAL STATEMENT OF REASONS

Appendix B: Summary of Comments Received during Public Comment Period from December 15, 2022, through January 9, 2023

OAL FILE NUMBER 2022-0816-07

Commenter Organization/ Name	Comment Number	Comment Summary	Response Number
MBK Engineers	22.1	Suggest prioritizing bringing the whole levee system up to Bulletin 192-82 standard and/or meet PL 84-99 eligibility. (Not subject to comment)	Response 5. DLIS Methodology Response 1. Federal Participation
MBK Engineers	22.2	"Current definitions would limit funding opportunities for all Districts to perform necessary maintenance and rehabilitation of their levee system."	Response 2.1 Definitions
MBK Engineers	22.3	"...support in working with the Council to focus on the larger strategy to reach a more sustainable system." (Not subject to comment)	Response 3. Request for increased Coordination
Alf W. Brandt	23	Legislative History of DLIS	Response 4.1. Authority
Dante Nomellini Sr.	24	Commented on fundamentals not being addressed and the problems with unsuitable prioritization of levees. Stated that a regulation is not necessary and does not think there is a use to fighting for the propriety of regulation because the recommendation of the Council will weigh heavily on policy throughout government investments.	Response 5. DLIS Methodology Response 3. Request for Increased Coordination
Brett Baker	25	Commented on a comment provided by the Central Delta Water Agency's Dante Nomellini Jr. at the November Council meeting regarding the Council's authority and questioned whether it is important or necessary for the Council to be in a rulemaking process. Mr. Baker noted that the formality of the process is inhibiting engagement between stakeholders and the Council.	Response 4.1. Authority Response 3. Request for Increased Coordination