

JUL 2023

Delta Levees Investment Strategy

Council Consideration of Proposed Regulation



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

Overview

1. Rulemaking Process
2. Proposed Modifications
3. Comments and Responses
4. Staff Recommendation

Rulemaking Process

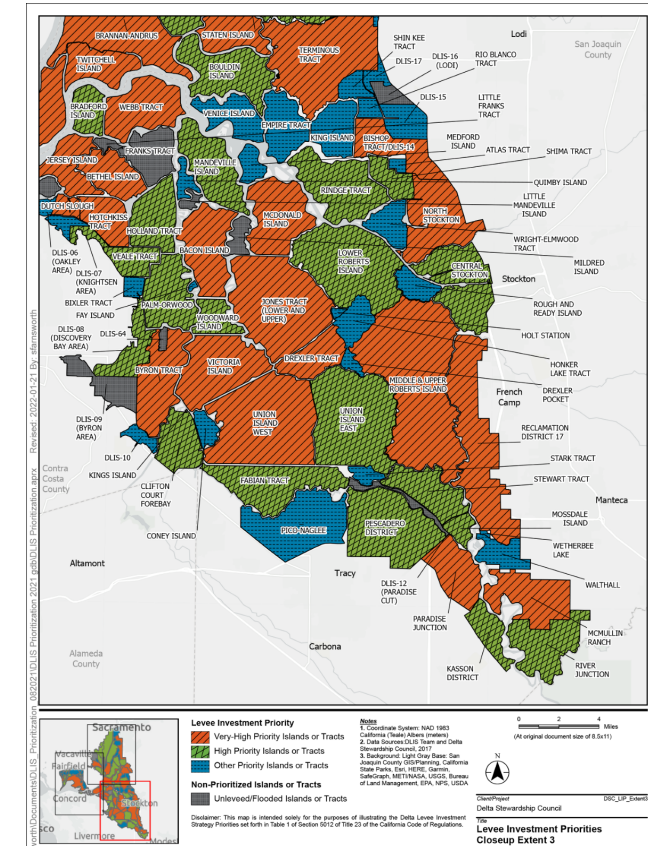
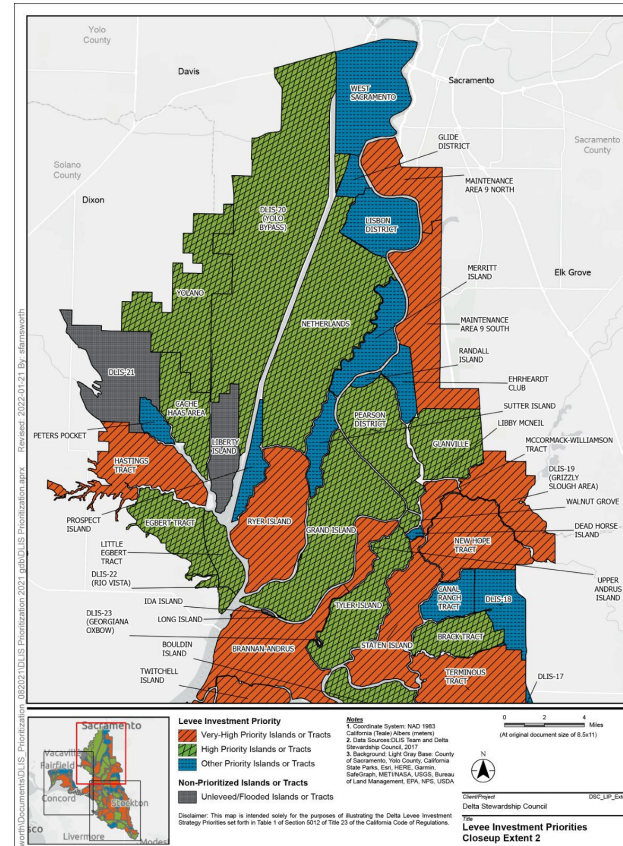
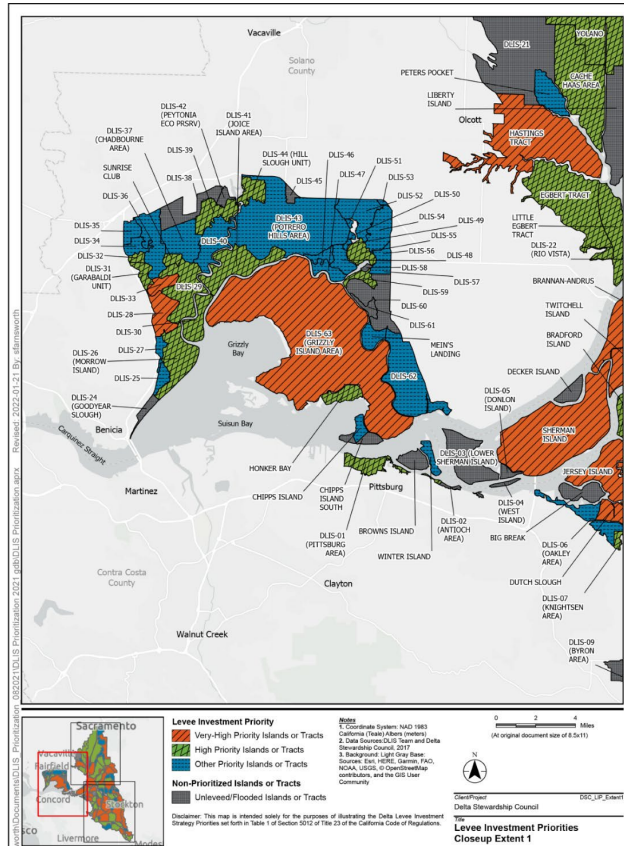
- **August 26, 2022:** Staff published a Notice of Proposed Rulemaking to amend portions of the California Code of Regulations pertaining to the Delta Levees Investment Strategy (DLIS)
- **February 23, 2023:** Council considered and responded to comments, then adopted Resolution 2023-01, directing staff to finalize a rulemaking package for DLIS, and giving staff authority to make non-substantive changes to the adopted DLIS rulemaking package as were necessary to effect the intent of that resolution.
- **March 9, 2023:** Staff submitted the rulemaking package to the Department of Finance (DOF)
- **May 18, 2023:** After DOF's approval, staff submitted the rulemaking package to the Office of Administrative Law (OAL) on May 18, 2023

Rulemaking Process, Cont.

- **June 27, 2023:** Staff received comments from OAL on the rulemaking package including, among other technical, non-substantive changes, comments recommending clarifying changes to the proposed regulatory language that are changes requiring 15-day recirculation.
- **June 30, 2023:** Staff withdrew rulemaking package submitted to OAL in order to address OAL recommendations, stating intent to conduct recirculation and resubmit.
- **July 6, 2023:** Staff released revised regulatory language and notice of additional 15-Day public comment period (July 7 through July 21, 2023).
- **Today:** Staff presents proposed revisions and summary of comments and responses, requests approval to resubmit rulemaking package to OAL to include revised language.
- Two *sufficiently related substantive* changes made in the 15-day recirculation for Council consideration ...

California Code of Regulations, Title 23, Section 5012

- Insertion in Appendix P of three close-up maps originally included as part of the Initial Statement of Reasons (ISOR) but not as part of the regulatory text.
 - These maps identify islands and tracts listed in Table 1 of the regulation by name.



California Code of Regulations, Title 23 Section 5012

- Clarification of the content of the annual written report required to be submitted by the Department of Water Resources (DWR) to the Council. No content requirements are added or removed.

5012 (c) Annual Report.

(1) The California Department of Water Resources shall submit a written annual report, as described in paragraph (2), 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 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.

(2) The report shall include:

(A) A description of all discretionary State funding for levees awarded by the California Department of Water Resources, during the reporting year; including both of the following:

(i) Levee improvement.

(ii) Levee operation and maintenance.

California Code of Regulations, Title 23

Non-Substantive Changes

- Section 5001(ii)(4)(B): a space is added between the word “section” and the number 15333.
- Section 5001, Authority cited: Section 85210 remains, the subsections are removed. No sections are added or removed.
- Section 5001, Reference: Sections are placed in numerical sequence. No sections are added or removed.
- Section 5012(a)(1): Two commas are replaced with the word “and.”
- Section 5012(b): The phrase “which is incorporated herein by this reference as if fully set forth” is revised to simplify language and conform to OAL's preferred style by instead saying “which is incorporated by reference.”

California Code of Regulations

Non-Substantive Changes Cont.

- Section 5012(b): Table 1, Misplaced asterisks following the names of three islands are removed.
- Section 5012(c)(2)(C): Corrected an inaccurate cross reference.
- Section 5102(c)(2)(E): Corrected an inaccurate cross reference.
- Section 5012(c)(2)(F): Misplaced capitalization of the word “the” is removed.
- Section 5012, Authority cited: Section 85210 remains, the subsections are removed. No sections are added or removed.

Public Comments Received

- The Council received one comment letter in response to the current notice of additional 15-day public comment
- Comments do not apply to scope of 15-day changes
- Response matrix provided
 - Also available at back table

Requested Action

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

1. The Executive Officer, or their designee, is authorized to take the actions necessary to make effective these regulations for the Delta Plan (Cal. Code Regs., § § 5001, 5012) specific to the DLIS in substantially the same form as presented.
2. The Executive Officer, or their designee, is authorized to execute and deliver any documents and take any steps, including making any changes to these regulations to secure approval by the OAL, that the Executive Officer, or their designee, may deem necessary or advisable to effectuate the purposes of the resolution.

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RESERVE SLIDES FOLLOW

California Code of Regulations, Title 23 Section 5012

Before and After Proposed Substantive Changes

5012 (c) Annual Report. (Before changes)

(1) The California Department of Water Resources (DWR) 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 DWR for levee operation, maintenance, repair, rehabilitation, replacement, and improvement projects within the legal Delta. At least 45 days prior to the oral presentation, and no later than March 1 of each calendar year, the DWR shall submit the written annual report to the Council and make the report publicly available.

(2) The report shall include:

(A) A description of State funds provided for each levee operation, maintenance, repair, rehabilitation, replacement, and improvement program funded during the reporting year; levee operation, maintenance, and improvement program funded during the reporting year;

5012 (c) Annual Report. (After changes)

(1) The California Department of Water Resources (DWR) shall submit a written annual report, as described in paragraph (2), to the Council as well as present the report to the Council, on State funds distributed or provided by the DWR 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 DWR shall submit the written annual report to the Council and make the report publicly available.

(2) The report shall include:

(A) A description of all discretionary State funding for levees awarded by the DWR, during the reporting year; including both of the following:

(i) Levee improvement.

(ii) Levee operation and maintenance.