

## Seeking Approval of the Delta Plan Pursuant to the Federal Coastal Zone Management Act

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**Summary:** The Delta Reform Act directs the Council to prepare the Delta Plan consistent with the federal Coastal Zone Management Act and to submit the plan for approval pursuant to that act. This memo outlines the benefits and processes of obtaining approval of the Delta Plan under the federal Coastal Zone Management Act and the steps being undertaken to begin seeking the Delta Plan's federal approval.

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### **Background**

The Delta Reform Act states, in part

The Council shall develop the Delta Plan consistent...the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism. (Water Code section 85300(d) (1) (A))

In addition, the Act requires:

If the Council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the Council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010. (Water Code section 85300(d)(2)).

Seeking approval of the Delta Plan under the federal Coastal Zone Management Act was first proposed in the *Delta Vision Strategic Plan* prepared by Governor Schwarzenegger's Blue Ribbon Task Force. The task force noted:

The federal government plays a major role in the management and regulation of the Delta. The Central Valley Project, run by the Bureau of Reclamation, stores and diverts millions of acre-feet of water in the Delta watershed each year. The Army Corps of Engineers maintains or regulates hundreds of miles of levees and other flood control facilities in the Delta and its tributary rivers. And the U.S. Fish and Wildlife Service and the National Marine Fisheries Service both enforce the federal Endangered Species Act to protect fish and other key species in the Delta. These are just the most prominent of the many federal agencies that influence the Delta.

Because Delta Vision is a state process, initiated by the Governor of California, it is critical to identify mechanisms to ensure effective federal participation in state-level plans.

Among the mechanisms the task force proposed to ensure federal participation in the Delta Plan's implementation was seeking approval of the plan under the federal Coastal Zone Management Act. The task force wrote:

California now has two major independent segments in its state adopted and federally approved Coastal Zone Management Program: one for the California Coastal Commission and one for the Bay Conservation Development Commission. These segments were developed independently at different times. The Delta appears to meet the legal definition of a coastal zone under CZMA. California can develop the [Delta] Plan with processes which conform to the CZMA procedural requirements and submit it for federal approval as another independent segment of the Coastal Zone Management Program.

### **What are the benefits of securing approval of the Delta Plan under the federal Coastal Zone Management Act?**

The Delta Reform Act provides a statutory basis for the Council's effort to coordinate state and federal agencies actions to carry out the Delta Plan. It also ensures that local and State agencies actions are consistent with the Delta Plan through the Council's regulatory authorities over these agencies' covered actions. Actions by federal agencies, however, are unaffected by state law. Federal agencies participation in the coordination of the Delta Plan are voluntary.

The federal Coastal Zone Management Act provides a potential mechanism for ensuring that federal agency actions are consistent with the Delta Plan. Section 307 of the Coastal Zone Management Act of 1972, called the "federal consistency" provision, gives a State a strong voice in federal agency decision-making for activities that may affect a state's coastal uses or resources that a state would not otherwise have through other federal programs. The federal consistency provision is a major incentive to join the National Coastal Zone Management Program and is a powerful tool that state programs use to manage coastal activities and resources and to facilitate cooperation and coordination with federal agencies.

Generally, federal consistency requires that federal actions, within and outside the coastal zone, which have reasonably foreseeable effects on any coastal use (land or water) or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. Federal actions include federal agency activities, federal license or permit activities, and federal financial assistance activities. Federal agency activities must be consistent to the maximum extent practicable with the enforceable policies of a state coastal management program, and license and permit and financial assistance activities must be fully consistent.

## **What are the steps in securing approval of the Delta Plan under the federal Coastal Zone Management Act?**

Attachment 1 to this report is memorandum from the Department of Justice to the Blue Ribbon Task Force describing the requirements and process for seeking approval of the Delta Plan under the federal Coastal Zone Management Act. It describes processes for involving federal agencies in the plan's development, which were followed by the Council in developing the Delta Plan. The federal Coastal Zone Management Act also identifies minimum contents of an approvable state coastal program, including a state's responsibility to define the federal actions that may be subject to the federal consistency requirement. Furthermore, a state must describe the federal interest in its coastal zone and provide for consideration of the national interest. A mechanism for coordination among affected agencies must be described. The plan must be submitted by the state's governor for approval by the federal Secretary of Commerce, who oversees the national Office of Coastal Resource Management within the National Oceanographic and Atmospheric Administration, the agency that also holds the National Marine Fisheries Service and the National Weather Service.

In addition to these requirements of federal law, several other steps will be needed to coordinate the Delta Plan with the existing provisions of the Bay Plan and the Coastal Act, which comprise California's current federally approved coastal zone management program. One is resolution of the overlapping authorities and policies of the Council and the San Francisco Bay Conservation and Development Commission (BCDC) in Suisun Bay and Suisun Marsh. Consideration must also be given to how the Council would cooperate with BCDC and the Coastal Commission as they participate with other coastal states to shape the Office of Coastal Resource Management's national coastal and ocean programs. BCDC and the Coastal Commission are also wary of the risk that the Council's addition to California's federally approved Delta Plan may affect the allocation of the state's federal grant funds for coastal zone management, which are already at the maximum allowed under the federal law and comprise important parts of these agencies' budgets. These intrastate issues need to be addressed early as the Council begins seeking approval of the Delta Plan under the federal Coastal Zone Management Act.

### **Next Steps**

To help the Council in seeking approval of the Delta Plan under the federal Coastal Zone Management Act, the staff proposes entering into an interagency agreement with BCDC. The agreement would secure BCDC's assistance, including the expertise of Tim Eichenberg, BCDC's former chief counsel, working as a retired annuitant, in coordinating the Delta Plan with the Bay Plan and the Coastal Commission and preparing the materials needed to seek federal approval of the Delta Plan. Mr. Eichenberg is an expert on the federal Coastal Zone Management Act and national ocean policy. He advised both the Coastal Commission and BCDC on their administration of their federally approved coastal zone management program.

To provide further assistance, the staff also intends to retain former BCDC Executive Director Will Travis to provide strategic advice and policy assistance in securing

approval of the Delta Plan under the federal Coastal Zone Management Act. Mr. Travis played key roles in securing federal approval of both BCDC's and the Coastal Commission's plans and is a leader in national coastal and oceans policy.

### **Questions for Council Consideration**

As the Council considers pursuing federal approval of the Delta Plan under the federal Coastal Zone Management Act, it may wish to consider:

- What is the federal interest in the Delta, as reflected in the coequal goals and other provisions of the Delta Reform Act?
- Would the benefits provided by federal approval of the Delta Plan outweigh the effort entailed in seeking the plan's federal approval?
- How do Council members wish to be involved as the staff pursues federal approval of the Delta Plan under the federal Coastal Zone Management Act?

### **List of Attachments**

Attachment 1: Department of Justice Memo -- Questions Regarding a Potential State Coastal Management Program for the Delta

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