

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2016-01

ADOPTION OF ADDENDUM TO DELTA PLAN EIR; DETERMINATION OF CEQA  
EXEMPTION; APPROVAL OF AMENDMENTS TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 23, SECTION 5001(dd)(3) AND DELTA PLAN WATER  
RELIABILITY RECOMMENDATION 15 REGARDING  
SINGLE-YEAR WATER TRANSFERS

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 *et seq.*, directs the Delta Stewardship Council (Council) to develop an enforceable, comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (collectively, the Delta); and

WHEREAS, the Delta Reform Act directs that the Delta Plan must further the “coequal goals” (Water Code §85300); and

WHEREAS, the Delta Reform Act defines the coequal goals to mean the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem (Water Code §85054); and

WHEREAS, the Delta Reform Act directs that the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place (*ibid.*); and

WHEREAS, the Delta Reform Act recognizes that the eight policy objectives set forth in Water Code §85020 are inherent in the coequal goals; and

WHEREAS, the Delta Reform Act mandates that a state or local agency that proposes to undertake a “covered action” must prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and must submit that certification to the Council (Water Code §85225); and

WHEREAS, the Delta Reform Act defines a covered action as a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that will, among other things, have a “significant impact” on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta (Water Code §85057.5(a)); and

WHEREAS, the Delta Reform Act does not define what it means for a covered action to have a “significant impact” on the coequal goals; and

WHEREAS, on May 16, 2013, the Council certified the Final Delta Plan Program Environmental Impact Report (State Clearinghouse No. 2010122028) (Final PEIR); and

WHEREAS, on May 17, 2013, the Council adopted regulations implementing the Delta Reform Act and, through those regulations, adopted a definition for the term “significant impact” (Cal. Code Regs., tit. 23, §5001, subd. (dd)); and

WHEREAS, this definition recognizes that “significant impact” means “a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects” (*ibid.*); and

WHEREAS, this definition also lists four categories of projects that have been determined not to have a significant impact on the coequal goals and are therefore outside the definition of “covered action” (*ibid.*); and

WHEREAS, one of these categories is “[t]emporary water transfers of up to one year in duration” (*id.* §5001, subd. (dd)(3)); and

WHEREAS, as applicable to temporary water transfers of up to one year in duration, the definition is structured so that it will remain in effect only through December 31, 2016, and will be repealed as of January 1, 2017, unless the Council acts before that date to extend it (*ibid.*); and

WHEREAS, the Council contemplated that any such extension would be based upon the Department of Water Resources' (DWR) and the State Water Resources Control Board's (SWRCB) participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016 (*ibid.*). The Council stated such recommendations should include measures to address potential issues with recurring transfers of up to one year in duration and improved public notification for proposed transfers (*ibid.*); and

WHEREAS, at the same time that it adopted this definition of “significant impact,” the Council adopted a related recommendation, Delta Plan Water Reliability Recommendation 15 (WR R15), which recommends that the DWR and the SWRCB work with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. WR R15 further provides that these recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers; and

WHEREAS, the Council structured the definition of “significant impact” and WR R15 in this manner because it had substantial evidence that single-year transfers occurring before January 1, 2017, would not have significant impacts on the coequal goals; and

WHEREAS, after reviewing materials and comments regarding transfers from other public agencies, research organizations, water users, water rights holders, and environmental non-governmental organizations, the Council determined that it should investigate further

whether single-year transfers that did not have significant impacts on their own could nonetheless have significant impacts in the aggregate; and

WHEREAS, the Council determined that incorporating the January 1, 2017, sunset date into its finding regarding the significance of impacts of single-year transfers on the coequal goals would limit the scope of potential aggregate impacts and would encourage compliance with WR R15; and

WHEREAS, pursuant to WR R15, the DWR and the SWRCB provided written recommendations to the Council in the form of memoranda submitted on July 2015 and September 2015 and oral recommendations at the Council meetings held on September 2015 and November 2015; and

WHEREAS, the Council held duly noticed meetings to discuss single-year transfers and to receive comments from Council staff and the public on July 23, 2015, September 24, 2015, November 19, 2015, and December 17, 2015; and

WHEREAS, the Council voted at its December 17, 2015, meeting to propose for adoption, an amendment to the definition of “significant impact” that would eliminate the sunset date and therefore render as permanent the finding that single-year transfers do not have significant impacts on the coequal goals; and

WHEREAS, the Council voted at its December 17, 2015, meeting to propose WR R15 for revision, so that it recommended the DWR, the SWRCB, and the California Department of Fish and Wildlife (DFW) memorialize certain interagency procedures adopted on a temporary basis in response to recent drought conditions, all as more fully described in Section 2 (*Project Description*) of the final Addendum to the Final PEIR (September 2016) (Addendum, or final Addendum) (attached hereto as Exhibit A); and

WHEREAS, at its December 17, 2015, meeting, the Council directed its staff to conduct California Environmental Quality Act (CEQA) review for the proposed project; and

WHEREAS, the proposed project consists of minor modifications to the Delta Plan and regulations implementing the Delta Plan’s policies, and none of the conditions requiring a subsequent or supplemental environmental impact report (EIR) as described in Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163 have occurred; and

WHEREAS, the Council has caused to be prepared an addendum pursuant to CEQA Guidelines Section 15164, for purposes of full disclosure and to document the consultation process; and

WHEREAS, the Addendum provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because there are no substantial changes in the Delta Plan and the regulations implementing the Delta Plan’s policies or the circumstances under which the Delta Plan and implementing regulations are to be undertaken that would result in new or substantially more severe environmental impacts

requiring major revisions to the Final PEIR, and there is no new information that involves new significant environmental effects or a substantial increase in the severity of previously identified environmental effects that would require preparation of a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, it can be seen with a certainty that there is no possibility that the proposed amendments may have a significant effect on the environment because (i) the proposed project would continue to exempt single-year cross-Delta and/or in-Delta water transfers from the covered action process; therefore, no change from existing conditions would occur; (ii) single-year water transfers were not classified as covered actions before the Delta Plan was adopted, have not been classified as covered action since the Delta Plan was adopted, and would continue to be excluded from the definition of covered action; therefore, the proposed project will not result in a change in physical conditions, and it will have no significant environmental effects; and

WHEREAS, the Council provided for public review and comment on the May 2016 draft Addendum for a 30-day period from May 13, 2016 through June 13, 2016 and provided for public review and comment on the final Addendum for a 15-day period from September 14, 2016 through September 29, 2016; and

WHEREAS, the final Addendum contains responses to comments received during the public comment period; and

WHEREAS, Council staff has independently studied the proposed project and has determined that the Project is exempt from environmental review pursuant to the CEQA Guidelines Section 15061(b)(3), which states “the general rule that CEQA applies only to projects which have a potential for causing a significant effect on the environment. Where it can be seen with a certainty that there is not possibility that the activity in question may have a significant effect on the environment, the activity will not be subject to CEQA,” for the reasons set forth in the Statement of Exemption (attached hereto as Exhibit B); and

WHEREAS, on September 29, 2016 the Council held a duly noticed public hearing to receive public testimony on the proposed project, including the exemption in CEQA Guidelines Section 15061(b)(3) and the Addendum to the Final PEIR, and reviewed and considered the information contained in staff reports pertaining to the proposed project, the Addendum, the Statement of Exemption, and all other pertinent documents, and all written and oral statements received at or prior to the public hearing; and

WHEREAS, the Council has independently reviewed and considered the information in the Addendum and the Statement of Exemption, which conclude that no further environmental review is required for the proposed project and that it can be seen with a certainty that there is no possibility that the activity in question may have a significant effect on the environment;

WHEREAS, the Council has initiated formal rulemaking under the California Administrative Procedures Act by filing a Notice of Proposed Adoption, published in the

California Regulatory Notice Register on July 22, 2016, and received and considered comments from the public during a 46-day public review period that began on July 22, 2016, and ended on September 6, 2016;

WHEREAS, after the July 22, 2016, publication described immediately above, the Council added documents and material to the rulemaking file for public inspection and comment, pursuant to Government Code section 11347.1, and received and considered comments from the public during a 15-day public review period that began on September 14, 2016 and ended on September 29, 2016; and,

WHEREAS, the Council has determined that the proposed regulatory action would not impose a mandate on a local agency or school district that proposes a covered action;

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.
2. Determines that the Addendum reflects the independent judgment of the Council.
3. Adopts the Addendum to the Final PEIR for proposed amendments to Subsection 5001(dd)(3) and WR R15.
4. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).
5. Approves the amendments to WR R15 in order to encourage the DWR, SWRCB, and DFW to memorialize certain interagency procedures adopted on a temporary basis in response to recent drought conditions.
6. Approves the amendments to Subsection 5001(dd)(3) in order to remove the sunset provision and statement of intent to consult with the DWR, SWRCB and stakeholders.
7. The Council directs the Executive Officer to incorporate the errata and any other non-substantive, technical changes identified at the September 29, 2016, meeting, and any others identified subsequent to that meeting.
8. The Council directs the Executive Officer to finalize all elements of the rulemaking package and submit it to the Office of Administrative Law once that is complete. The Council grants the Executive Officer discretion to make changes required by the Office of Administrative Law in order to comply with requirements of the California Administrative Procedure Act, and inform the Council of any such changes.

CERTIFICATION

On a motion by Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by a vote of \_\_\_\_ in favor to \_\_\_\_ opposed at a regular meeting of the Delta Stewardship Council on September 29, 2016.

Dated: September 29, 2016

Patricia Rogers  
Clerk of the Board of the Delta Stewardship Council