

Consideration of Certifying Final Delta Plan PEIR, and Adopting the Proposed Final Delta Plan and Proposed Regulation: Overview of Staff Reports and Council Actions

This staff report provides an overview of actions the Council will consider taking at its May 16-17 meeting. In addition to this overview memo, the Council will see three separate staff reports; one on the Final Program Environmental Impact Report (PEIR), another on the proposed final Delta Plan, and a final one on the proposed final Rulemaking Package. This memo reviews the history of public involvement in developing the Delta Plan, its PEIR and the Rulemaking Package, provides a summary of the Council's direction at its March 28-29 meeting, and also introduces three actions that staff recommends the Council take at this meeting.

Specifically, staff suggests consideration of the following actions in order:

1. Final PEIR:

- The Council reviews and considers the information in the Final PEIR
- The Council certifies that the Final PEIR has been completed in compliance with CEQA
- The Council adopts the CEQA Findings (which includes findings regarding impacts and mitigation, the Statement of Overriding Considerations and conclusions about alternatives)
- The Council adopts the Mitigation and Monitoring Reporting Program and the PEIR's mitigation measures are incorporated into the Delta Plan
- The Council directs staff to file a CEQA Notice of Determination with the State Clearinghouse (if/when the Council adopts the Delta Plan)

2. Proposed Final Delta Plan

- The Council adopts the proposed final Delta Plan (as modified by the three errata listed in Attachment 3, agenda item 6b), and including the revised Executive Summary)
- The Council directs staff to make any other changes identified and directed by Council at the May meeting, as well as any final technical and nonsubstantive formatting edits necessary for producing the final Delta Plan
- All of the Mitigation Measures identified in the PEIR and in the Findings that are within the responsibility and jurisdiction of the Council are adopted and incorporated into the Delta Plan through Delta Plan Policy GP1

3. Proposed Final Regulation

- The Council adopts the proposed final regulation as presented at the May meeting and directs staff to incorporate the errata and any other non-substantive, technical changes listed in Attachment 1b of agenda item 6c
- The Council directs staff to incorporate any other changes identified at the May meeting, plus any others identified subsequent to the meeting for the proposed final regulation
- The Council directs the Executive Officer to provide the California Department of Finance with any additional information or assistance it needs to complete its review
- The Council directs the Executive Officer to finalize all elements of the rulemaking package and submit to the Office of Administrative Law once that is complete
- The Council directs the Executive Officer to prepare and submit to the Office of Administrative Law a request for an expedited effective date of the regulation for good cause (in particular, the urgent need to begin enforcement of the Delta Plan to address the crisis in the Delta) under Government Code section 11343.4(b)(4)
- 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 Procedures Act

Introduction and Meeting Overview

At the March 28-29 Council meeting, the Council directed the staff to revise the draft Delta Plan and its proposed implementing regulation to incorporate revisions that the Council approved at the meeting. It directed staff to circulate the modified text of the regulation for public review and comment for an additional 15 days, as required, the Administrative Procedure Act. It also directed the staff to complete preparation of the Final PEIR on the Delta Plan. The Council's action followed staff reports on:

- The PEIR, including a history of the public review process, the value and major points of information the PEIR and its public comments have provided, common public comments and staff's responses, staff's recommendations for improvements/refinements to the PEIR's mitigation measures, and a comparison of the Final Draft Delta Plan to its six alternatives.
- The proposed rulemaking package, including the history of the Council's rulemaking process public comments received on the proposed regulations, and suggested revisions to the draft regulation in response to these comments. The Council also received and considered extensive testimony about the proposed regulations.
- The final draft Delta Plan, including technical and non-substantive edits (presented as a "Consent Checklist").

Subsequently, at the April 25 meeting, staff presented a revised Executive Summary of the Delta Plan to the Council for their review and comment.

Background

The Delta Reform Act of 2009, which created the Delta Stewardship Council (DSC), requires that the DSC adopt a “legally enforceable” Delta Plan. The California Environmental Quality Act (CEQA) requires the Council to evaluate the potential direct and indirect significant adverse environmental consequences of the Delta Plan, and to mitigate those consequences if feasible. The State Administrative Procedures Act (APA) spells out the process through which the policies of the Delta Plan will become enforceable state regulations, including a review and approval by the state’s Office of Administrative Law (OAL) following adoption by the Council.

Public Involvement

The Council has engaged in an intensive process of public involvement as it has addressed these requirements. These public involvement opportunities have included 64 regular Council meetings, three meetings about early actions, twelve workshops about other Delta Plan topics, seven EIR scoping meetings, eight EIR hearings, and dozens of other meetings with Boards of Supervisors, Delta civic groups, or other stakeholders about the plan.

Over 160 different speakers have addressed the Council during these meetings: commonly speaking multiple times on separate points they raise. The six drafts of the Delta Plan, three draft PEIR volumes, and the rulemaking package have elicited over 13,000 specific comments. These include 213 comment letters submitted by 149 different organizations and individuals during the recently-concluded comment periods on the Recirculated PEIR and the Rulemaking Package. Table 1 below summarizes the major Delta Plan-related actions that the Council has taken over the past two years to get to this point and are a useful reminder of how much work has occurred and how far we have come.

Table 1: History of Delta Stewardship Council Delta Plan Activity

2010	2011	2012	2013
<ul style="list-style-type: none"> • Council is sworn in and holds 1st meetings (April) • Chair and Vice-Chair elected, Interim EO appointed, Council rules adopted at April meetings 	<ul style="list-style-type: none"> • Statewide scoping meetings on Delta Plan held (January) • Scoping meetings on Delta Plan held in the Delta (January) • 1st draft Delta Plan 	<ul style="list-style-type: none"> • Statewide field hearings on DPEIR (Jan. 11-12, 17-19) • Public comments due on DPEIR (February) <p>Review of the DPC’s Economic</p>	<ul style="list-style-type: none"> • Public comments due on RDPEIR and Rulemaking Package (January) • Two public hearings re draft EIR, Delta Plan and Rulemaking Package (January)

<ul style="list-style-type: none"> • Consultation with local, state and federal agencies begins (April and continues to date) • CH2MHill hired as consultants to assist in developing Delta Plan, EIR and Rulemaking package (April) • Interim Plan adopted (August) • Early Actions review completed (November) 	<p>released (February)</p> <ul style="list-style-type: none"> • 2nd draft Delta Plan released (March) • 3rd draft Delta Plan released (April) • 4th draft Delta Plan released (June) • 5th draft Delta Plan released (August) • DPEIR published (November) 	<p>Sustainability Plan (February)</p> <ul style="list-style-type: none"> • Final Staff Draft Delta Plan published (May) • Proposed Final Draft Delta Plan (Redline) released (September) • Final Draft Delta Plan, Recirculated DPEIR (Volume 3) and draft Rulemaking Package released (November) 	<ul style="list-style-type: none"> • Council provides direction to finalize PEIR, Delta Plan and Delta Plan regulations (March) • Final Delta Plan, FPEIR and Final Rulemaking Package published (May) • Council certifies FPEIR, adopts Delta Plan and regulations (May) • Regulation become effective, begin Delta Plan implementation (July/October)
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Major Comment Themes from PEIR, Rulemaking and Delta Plan Processes

Throughout the process of developing the Delta Plan, its PEIR, and Rulemaking Package, public comments have emphasized several major recurring themes that are listed below. These were first summarized in a report to the Council in January, 2012, on completion of the fifth staff draft, by consultants John Kirlin and Bob Twiss (http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_9_Attachment_1.pdf), which remains relevant today.

- Co-equal goals. As Kirlin and Twiss observed, most commenters continue to profess commitment to achieving the coequal goals. The large number of commenters and the thoroughness of comments are an acknowledgement of stakeholders’ recognition of the Delta’s value and the importance of the Delta Plan.
- A search for a shared understanding. Continued attention to details in the Delta Plan’s narrative and the Rulemaking Package’s Statement of Reasons reflects the ongoing examination of the Delta’s condition and assessment of its opportunities and problems, influenced by commenters’ presentation of facts and perspectives that support their particular interests. Over time, consensus about the Delta Plan the narrative has grown, reflecting both growing agreement about its analysis and, perhaps, weariness among some stakeholders.
- Desire to be minimally affected by the Delta Plan and Council. In general commenters desire the Delta Plan and Council to protect or advance the interests of those making the comments, avoiding additional costs or disruptions on themselves

while shifting burdens to someone else. This pattern is similar to that found in recent surveys of Delta agencies, interest group leaders, and scientists, which found that while stakeholders and policymakers generally agree with scientists on priority solutions, individual groups are more likely to prioritize actions unrelated to their own uses of Delta resources, and to shy away from actions that would be costly for them¹. Many plan revisions from the fifth staff draft, such as those to WR P1 (Reduce reliance on the Delta) or RR P1 (Priorities for State Investment in Levees), reflect attempts to accommodate commenters' concerns about the plan's impacts on particular interests or prerogatives. Many commenters express appreciation for plan revisions that better accommodate their viewpoints, while continuing to argue aggressively for further revisions that fully satisfy their interests.

- A shift from direct Council authority to collaboration. Kirlin and Twiss reported that from the second to the fifth staff draft, the Delta Plan leaned heavily away from enforcement and more towards an advisory role for the Council. The Delta Plan continues to rely on the regulatory authority provided by the requirement for Delta projects to be consistent with the Delta Plan, but revisions of the Delta Plan have continued the shift from direct regulation to collaborative implementation. An example is the Delta Plan's emphasis on the Council's role as a leader of the coordinating interagency Delta Plan implementation committee, which was introduced in the sixth staff draft. Overall, the plan includes only 14 regulatory policies while providing 73 non-binding recommendations. Also noteworthy is the introduction, in the sixth staff draft, of statements about the particular actions covered by various policies in order to narrow and clarify the breadth of regulated activities.
- Deferral to others. The Delta Plan's deferral to others' planning processes and decisions has grown across subsequent drafts. Examples include the plan's provisions regarding the BDCP and SWRCB flow criteria, which are simple recommendations to the responsible agencies to complete these important actions promptly. Other examples include acceptance in whole or part of most of the Delta Protection Commission's recommendations about protecting the Delta as a place, land use policies that accept local governments' current land use plans, and revisions to policies and regulations to minimize areas of concurrent jurisdiction with agencies like the State Water resources Control Board or Central Valley Flood Protection Board.
- Depiction with illustrations and maps. The proposed final Delta Plan includes many more illustrations and maps depicting the application of its policies and

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Ellen Hanak, Caitrin Phillips, Jay Lund, John Durand, Jeffrey Mount, Peter Moyle 2013. *Scientist and Stakeholder Views on the Delta Ecosystem*. Public Policy Institute of California. 36pp.

recommendations than the fifth staff draft. Examples include the maps that identify restoration opportunity areas or rural areas protected for agriculture and natural resource use and a figure that illustrates how projects can avoid or mitigate impacts to restore habitats in the restoration opportunity areas. These graphics respond to requests for further clarity about how or where plan policies will be implemented.

- Performance management. A suite of performance measures, a list of information and research needs, and a timeline for action has been added to each chapter. In addition, the implementation committee will include annual reports on performance metrics and accomplishments in achieving the coequal goals.

Staff Recommendation for Council Action

The three separate staff reports for this agenda item and the corresponding resolutions attached to those reports, present the Final PEIR, the proposed final Delta Plan and the proposed final rulemaking package to the Council for its consideration of certification/adoption. Information provided in the staff reports is necessary to either inform the Council as they consider approval of the final documents or are part of the final documents (e.g. CEQA Findings as part of the Final PEIR). Action on the indicated items will allow the Council to certify the Final PEIR, adopt the proposed final Delta Plan, and adopt regulations based on policies contained in the Delta Plan.

Next Steps

If the Council takes action as suggested in this overview memo, staff will conform the documents to reflect Council direction, including: filing a CEQA Notice of Determination with the State Clearinghouse, producing the Final Delta Plan and submitting the Final Rulemaking Package to OAL. All final documents will be promptly posted on the DSC website.

Contact

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