

## **Schedule of Key Steps for Finalizing Delta Plan, Delta Plan Regulations and Programmatic Environmental Impact Report**

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This staff report provides an overview of the critical steps and milestones to finalize the Delta Plan, its regulations and the Final Programmatic Environmental Impact Report (FPEIR). This report also provides an updated schedule for these processes.

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### **Background**

On November 30, 2012 the DSC published the Final Draft Delta Plan, the Recirculated Draft Programmatic Environmental Impact Report Volume 3 (RDPEIR) and the draft Rulemaking Package. There were two separate, but concurrent 45-day public comment periods for the RDPEIR and the draft Rulemaking Package that ended on January 14, 2013. During this 45-day period DSC also received separate comments on the Final Draft Delta Plan. In addition to the written public comment period, the Council held two public hearings (January 11<sup>th</sup> and January 24<sup>th</sup>) to receive public testimony on the draft documents. The public hearing on January 24<sup>th</sup> was a required step in the Administrative Procedures Act (APA)/Office of Administrative Law (OAL) process and therefore limited to public testimony on the draft Rulemaking Package only. Comment letters and comments received via email prior to the January 24<sup>th</sup> public hearing were posted to the DSC's website on February 1, 2013. This posting date also included a transcript of the January 11<sup>th</sup> hearing. A transcript of the January 24<sup>th</sup> hearing along with written comments received by 5pm on that day were posted to the DSC website on February 6, 2013.

From the 45-day comment periods and two public hearings a total of 192 comment letters were received on all three draft documents. Comments were received from 148 entities including, federal, state and local agencies, tribes, interest group and individuals. Comments contained in comment letters were "delineated" or categorized by document type (RDPEIR, Rulemaking Package or Final Draft Delta Plan) and resulted in the following:

- a total of 1,136 comments were received on the Final Draft Delta Plan
- a total of 1,112 comments were received on the RDPEIR
- a total of 791 comments were received on the draft Rulemaking Package

DSC staff and legal counsel have been reviewing comments and drafting proposed responses or revisions and will present this information to the Council at its March 28-29 meeting. At the March meeting Council will be asked to consider, discuss and provide final direction to staff on in light of major comments for each of the draft documents. Below are more detailed descriptions of key steps and milestone dates for each of the documents that will lead to finalizing the Delta Plan, its regulations and the FPEIR.

### **Final Draft Delta Plan**

Though a formal public comment period was not held for the Final Draft Delta Plan after its release on November 30, 2012, staff did receive numerous comments from stakeholders and members of the public specific to the Delta Plan. In keeping with past efforts, Council staff have categorized comments (i.e. by Delta Plan chapter, minor versus major comments, etc.), are currently reviewing these comments and will draft potential responses or suggestions for revisions to present at the March 28-29, 2013 meeting for the Council's consideration.

After the March 28-29 Council meeting, staff will incorporate final revisions to the Delta Plan based on Council direction including those needed to ensure consistency with revisions to the Rulemaking Package. Staff will then prepare and publish a "red line" version of the Final Delta Plan for the Council to use as they consider adoption of the plan at their May meeting. After the May meeting, staff will prepare a "clean" version of the Final Delta Plan that incorporates final formatting and graphics requirements to produce a "polished" and professional looking document.

### **Rulemaking Package and Proposed Delta Plan Regulations**

Council staff and legal counsel are currently reviewing comments received on the draft Rulemaking Package and drafting potential responses or suggestions for revisions to present at the March 28-29, 2013 meeting for the Council's consideration, discussion and final direction.

In April staff will finalize the Rulemaking Package by incorporating revisions to the draft regulations, Statement of Reason and the Economic and Fiscal Impact Statement portions of the package based on Council direction. If revisions are substantial and sufficiently related to the original proposal, the revised Rulemaking Package will be circulated for an additional 15-day rulemaking public comment period. Immediately following this comment period, Council staff will again conduct a review of comments and draft responses for inclusion in the final Rulemaking Package. Staff will also make conforming changes in the Final Delta Plan as appropriate. In addition to the steps above, the revised Rulemaking Package will be submitted to the Department of Finance for review and approval of the Economic and Fiscal Impact Statement prior to submission to OAL.

At its May meeting, after certifying the Final EIR, the Council will consider adoption of the final Rulemaking package including the proposed regulations. If adopted, the final Rulemaking Package and regulations will be submitted to the OAL for review. The OAL review can take up to 30 days. After approval by the OAL the proposed regulations will be filed with the Secretary of State and become state regulations.

### **DPEIR (Volumes 1 and 2) and Recirculated DPEIR (Volume 3)**

A two volume Draft Programmatic Environmental Impact Report (DPEIR) reviewing the environmental consequences of the Fifth Staff Draft of the Delta Plan was released in November 2011 for a public review. The comment period on the DPEIR ended in February 2012.

Comments the Delta Stewardship Council (DSC) received on the DPEIR, as well as the draft 5<sup>th</sup> Staff Draft Delta Plan itself resulted in changes to the draft Delta Plan. In light of these changes, the Council decided that an additional DPEIR volume - analyzing the November 2012 Final Draft Delta Plan - should be prepared for public review and comment. This additional volume or Recirculated DPEIR (Volume 3) was circulated for a 45-day public comment period and staff and legal counsel are currently preparing responses to comments on the Recirculated DPEIR (Volume 3), as well as those on the previously-circulated DPEIR Volumes 1 and 2.

Major comments and associated responses drafted by staff will be presented to the Council at its March 28-29, 2013 meeting for its consideration, discussion and final direction for inclusion in the FPEIR. At this meeting staff will also inform the Council of any changes to the Delta Plan that the EIR and its comments process suggest. The staff will also present its analysis - which will ultimately be a part of the CEQA "findings" associated with certification of the EIR - of how the Final Delta Plan furthers the achievement of the coequal goals, comparing the EIR alternatives based on their ability to further the achievement of the coequal goals.

In April, staff will complete the Final EIR to ensure that any policy-based changes the Council directs to the Plan and associated regulations in March are evaluated for their potential environmental impacts. Staff will also correct any errata during this time frame. The FPEIR will be published ten days ahead of the May Council meeting with all required notifications completed as well.

At the May Council meeting, the Council will hear any public comment on the Final Delta Plan and FEIR and the Council will then consider whether to certify the FPEIR based on compliance with CEQA. Following certification, the Council will vote to adopt the Final Delta Plan and associated regulations.

### **Schedule Overview**

A summary of key steps and anticipated timeline is provided in the table below as well as in Attachment 2.

Date	Action(s)
January 11, 2013	<ul style="list-style-type: none"> <li>• Council conducted special hearing for Final Draft Delta Plan, Recirculated Delta Plan Draft PEIR (Volume 3) and draft Rulemaking package.</li> </ul>
January 14, 2013	<ul style="list-style-type: none"> <li>• 45-day written comment periods ended for Recirculated Delta Plan draft PEIR (Volume 3) and draft Rulemaking package.</li> </ul>
January 24, 2013	<ul style="list-style-type: none"> <li>• Council conducted Rulemaking Hearing as required under APA/OAL process.</li> </ul>
Mid-January to late March	<ul style="list-style-type: none"> <li>• REIR and Rulemaking Comments posted on website.</li> <li>• Comments and public testimony categorized by document type and review process conducted.</li> <li>• Responses to comments on Recirculated DPEIR (Volume 3), draft Rulemaking Package and Final Draft Delta Plan are drafted. Thorough internal review of draft responses conducted by DSC staff.</li> <li>• Begin drafting FPEIR, including Comparison of Alternatives to Project Objectives and CEQA Findings.</li> <li>• Begin drafting Revised Statement of Reasons/Rulemaking Package for OAL submission.</li> <li>• Begin minor editorial revisions to Final Draft Delta Plan.</li> <li>• Complete staff report for Council re. comments and draft responses on Recirculated DPEIR (Volume 3), draft Rulemaking Package and Final Draft Delta Plan</li> </ul>
March 28-29, 2013	<ul style="list-style-type: none"> <li>• Present major comment themes and proposed responses for Final Draft Delta Plan, Delta Plan DPEIR and draft Rulemaking Package. Presentation to include consent</li> </ul>

	<p>items and Council action items with staff proposed responses or revisions for Council consideration, discussion and final direction.</p>
<p>Beginning of April to beginning of May</p>	<ul style="list-style-type: none"> <li>• In needed, carry over discussion from March Council meeting on response to comments.</li> <li>• Incorporate final revisions as directed by Council to Final Delta Plan, Final Delta Plan EIR, Revised Rulemaking Package and regulations.</li> <li>• Conduct additional 15 day public comment period for Rulemaking Package based on revisions to proposed regulations and draft the Final Rulemaking Package.</li> <li>• Fiscal Impact Statement goes to Dept. of Finance for review.</li> <li>• Complete staff report for Council in preparation for May 16-17 meeting to certify FEIR, adopt Delta Plan and regulations.</li> </ul>
<p>Beginning of May</p>	<p>10 days in advance of May 16-17 Council meeting:</p> <ul style="list-style-type: none"> <li>• Publish and post online staff report for May Council meeting</li> <li>• Publish and post online Final Delta Plan (“red line” version)</li> <li>• Notifications for FPEIR and Rulemaking package are received by required recipients</li> <li>• Publish and post online Final Statement of Reasons and Rulemaking Package</li> <li>• Publish and post online FPEIR</li> </ul>
<p>May 16-17, 2013</p>	<ul style="list-style-type: none"> <li>• FPEIR considered by the Council for certification</li> <li>• Final Delta Plan considered for adoption</li> <li>• Proposed regulations considered by Council for adoption</li> </ul>
<p>Mid-May to end of June</p>	<ul style="list-style-type: none"> <li>• Post Notice of Determination for FPEIR</li> </ul>

	<ul style="list-style-type: none"><li>• Submit final Rulemaking package and regulations to OAL for review</li><li>• Complete professional formatting for Delta Plan and publish/post “clean” document online</li></ul>
July to beginning of August	<ul style="list-style-type: none"><li>• OAL submits regulations to Secretary of State</li><li>• Regulations based on Delta Plan policies become effective</li></ul>
October 1, 2013	<ul style="list-style-type: none"><li>• Based on a quarterly schedule for approval of regulations – if Delta Plan regulations do not become effective on July 1 this is the next date this would occur</li></ul>

**List of Attachments**

Attachment 1: “Consideration of Public Input” Rulemaking under the California APA from OAL

Attachment 2: Timeline of Milestones and Key Interim Steps for Finalizing the Delta Plan, its Regulations and the Delta Plan FPEIR

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