

Council Direction for Preparing the Final Delta Plan PEIR, Rulemaking Package and Final Delta Plan: Overview of Staff Reports and Requested Actions

This staff report provides an overview of actions the Council will be asked to take at its March 28-29 meeting. In addition to this memo, the Council will see three separate staff reports; one on the PEIR, another on the Rulemaking Package, and a final one on the Delta Plan. This memo reviews the history of public involvement in developing the Delta Plan, its EIR and the Rulemaking Package, and provides a broad overview of public comments received during recent reviews of these documents. It also introduces four draft resolutions that staff suggests the Council adopt at the meeting.

Specifically, staff is requesting the following actions:

- Direction to continue preparation of the Final PEIR;
 - Final direction on several staff proposed modifications of certain regulatory elements of the Rulemaking Package along with conforming revisions to the Delta Plan's policies and recommendations; and
 - Approval of various minor drafting, editing and other corrections for the Delta Plan as indicated in an attachment to this report.
 - Consideration of steps the Council will need to take at the May meeting to certify the EIR, adopt the Delta Plan and adopt regulations based on Delta Plan policies.
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Introduction and Meeting Overview

After an intensive 2 years and 3 months, the first-ever Delta Plan process is nearing closure. A detailed chronology is shown below in Table 1. Since the close of public comment periods on the Recirculated Delta Plan Programmatic Environmental Impact Report (PEIR) and the Rulemaking Package on January 14 of this year and the Council's January 24 hearing on the Rulemaking Package, staff has reviewed public comment on these documents as well as those received on the Delta Plan itself. This review is now complete and at this March meeting staff will present final recommendations to the Council on the Delta Plan Draft PEIR, the Rulemaking Package and Final Draft Delta Plan.

Action on the indicated items will allow the Council to certify the PEIR, adopt the Final Delta Plan, and adopt regulations based on policies contained in the Delta Plan at the May 2013 meeting.

The staff reports you see at this March meeting, (See agenda items 6a, 6b, and 6c) focus on new information learned from the public input process for each of these draft

documents and outline the staff-proposed revisions resulting from review of these comments.

To summarize, staff is recommending the following action by the Council:

- Direction to continue preparation of the Final PEIR;
- Final direction on several staff proposed modifications of certain regulatory elements of the Rulemaking Package along with conforming revisions to the Delta Plan's policies and recommendations; and
- Approval of various minor drafting, editing and other corrections for the Delta Plan as indicated in an attachment to this report.
- Consideration of steps the Council will need to take at the May meeting to certify the EIR, adopt the Delta Plan and adopt regulations based on Delta Plan policies.

Staff suggested modifications to the PEIR, Rulemaking Package, and the Delta Plan respond to public comments, which is a normal part of these public processes, and are generally in sync with past Council decisions. Most of the recommended changes are merely refinements. In some instances staff has prepared options for Council consideration. In each case there is a staff recommended option. Once the Council gives its direction, these modifications will be reflected in the Delta Plan PEIR, Delta Plan, and Rulemaking documents slated for Council adoption at the May 2013 meeting.

It is the view of staff and legal counsel that the modifications recommended will not require recirculation of the Delta Plan's PEIR. However, the modifications to the proposed regulations (being "substantial but reasonably related" to the original regulations) are subject to an additional 15-day public comment period, which would occur before final Council action in May.

A suggested Council motion for each of the requests for Council action is summarized in the attached staff recommended motions (Attachment 1).

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.

The Council has engaged in an intensive process of public involvement as it has addressed these requirements. These public involvement opportunities have included 62 regular Council meetings, three meetings about early actions, twelve workshops

about other Delta Plan topics, seven EIR scoping meetings, eight EIR hearings, and ten other meetings with Boards of Supervisors or Delta civic groups 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 192 comment letters submitted by 148 different organizations and individuals during the recently-concluded comment periods on the Recirculated PEIR and the Rulemaking Package. Table 1 below and Attachment 2 summarize 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 • 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) 	<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 released (February) • 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) 	<ul style="list-style-type: none"> • Statewide field hearings on DPEIR (Jan. 11-12, 17-19) • Public comments due on DPEIR (February) • 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"> • Public comments due on RDPEIR and Rulemaking Package (January) • Two public hearings re draft EIR, Delta Plan and Rulemaking Package (January) • 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)

Summary of Major Comment Themes from PEIR, Rulemaking and Delta Plan Processes

The recent round of public comments on the DPEIR/RDPEIR, Rulemaking Package and Final Draft Delta Plan emphasize several major recurring themes that are listed below. A more detailed discussion of these themes and general staff responses are included later in this report.

Delta Plan PEIR Comment Themes

1. EIR should have evaluated all possible BDCP options in detail.
2. Mitigation measures too vague.
3. Mitigation measures usurp local authority.
4. Upstream impacts of natural flows were not analyzed.
5. EIR's detail not sufficient.
6. Specific alternative submitted by commenter not analyzed.
7. More Natural Flow Regime and WR P1 would reduce water supply.
8. EIR should have included a discussion of the ability of Delta Plan alternatives to meet project objectives.

Rulemaking Package Comment Themes

1. The Council does not have authority to take a regulatory approach.
2. The Council does not have authority for key regulations such as WR P1 or DP P1.
3. Some regulations constitute a "taking" of property without compensation.
4. Regulations affect water rights and area of origin rights.
5. Some regulations duplicate or conflict with the authority of other state or local agencies.
6. The regulations improperly mix unnecessary, non-regulatory language with regulatory language.
7. Some regulations lack clarity about what regulated entities are required to do.

Final Draft Delta Plan Comment Themes

1. Comments on the BDCP and its relationship to the Delta Plan.
2. Comments on the Delta Plan's recommendations.
3. Editorial comments and factual corrections.
4. A few comments advocating new policies or recommendations.

Next Steps

Following the Council's March meeting, the next critical steps occur at our May meeting, when the Council will receive and act on the following matters, in the order indicated:

- **The Council will be asked to certify that the PEIR, as revised, is adequate, as required by law.** The Final PEIR, including staff/consultant responses to public comments and any modifications, editing and technical changes recommended by staff for Council consideration, or to reflect actions at the March Council meeting, including any changes that need be made to conform to the revised the Rulemaking Package.
- **The Council will be asked to adopt the Delta Plan as amended to be consistent with previous Council action.** The Final Delta Plan, including proposed editing and technical changes, as well as modification to reflect Council actions at this meeting.
- **The Council will be asked to adopt the final Rulemaking Package** reflecting actions taken by the Council at this meeting, and after considering comments received during the additional 15 day public comment period on the modified regulations.

After the May meeting, staff will conform the documents to reflect Council direction, submit the Final Rulemaking Package to OAL and promptly post the revised documents on the DSC website, as well as submit them to other agencies as required by law.

List of Attachments

Attachment 1: Draft Resolutions for Council Action, March 28-29, 2013

Attachment 2: Delta Plan Development Process

Contact

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