

Update on Development of the Final Staff Draft Delta Plan

Summary: This report and the attachments present information requested by the Council at the March 29 and 30 meeting, as well as new information about the status of the final staff draft Delta Plan. Staff will present follow-up information on major comments received on the Delta Plan Draft EIR and will request direction from the Council on several policies and recommendations discussed at the last meeting. In addition, staff will update the Council on the status of development of the final staff draft plan and present an overview of the appendices and graphics for the final staff draft plan.

Background

At the March 29-30 meeting, staff presented a report highlighting issues in the draft Delta Plan where further direction from the Council was needed. In this report, staff presented information on comments received on each item and alternative approaches, including the staff's recommendations, to address these comments. In addition, staff provided a table summarizing current policy and recommendation language for the draft Delta Plan. Lastly, staff provided a table summarizing other comments received that staff had assessed as non-controversial or that would not result in major changes between the 5th and final staff draft plans. That report as well as those presented at the earlier March meeting and in February represent a series of updates related to developing the latest version of the draft Delta Plan, its policies and recommendations, and addressing comments and issues to move forward towards a final plan.

The Council has also received several brief reports from its legal and consulting teams on major Delta Plan EIR comments and the status of responding to comments.

At the March 29-30 meeting, staff were directed to bring several outstanding issues back in April for further discussion and final direction from the Council. In addition, Council members requested a more detailed presentation on major Delta Plan EIR comments. Staff were also asked to provide information on graphics for the final staff draft Delta Plan. This report addresses the Council's request and contains five components related to either the Delta Plan EIR or to the final staff draft Delta Plan.

Specifically, this report includes:

- a) A follow-up presentation on Delta Plan EIR comments
- b) A status report on the development of the final staff draft plan
- c) A follow-up discussion and request for direction on several draft Delta Plan policies and recommendations

- d) A review of appendices in the draft Delta Plan, including new appendices for the final staff draft plan
- e) A review of graphics included in the draft Delta Plan, including new graphics under development for the final staff draft plan.

Major Comments from the Delta Plan EIR

The attached table summarizes major comments received for the DEIR for the 5th draft Delta Plan. There were a total of 417 comments received from 53 commenters. Comments in the table are organized into 15 categories and 34 themes derived from the individual comments. The number of comments received for individual categories ranges from 9 to 74. The category titled “Estuary Protection and Restoration” received the highest number of comments (74) while “Recommendations” and “Comments in Support of the Delta Plan” both received 9 comments each.

Categories of comments include:

- Estuary Protection and Restoration
- Water Quality and Flow Improvement
- Conflicts with Legislation or Regulatory Structure
- DSC Authority and Jurisdiction
- General Comments
- Inclusion of Previous Comments and Additional Information
- Bay-Delta Conservation Plan
- Questions
- Policies and Recommendations
- Use of Outdated or Incorrect Information
- Funding
- Text Changes
- Delta Plan Clarity
- Recommendations
- Comments in Support of Delta Plan

Status of Development of Final Staff Draft Delta Plan

Development on the final staff draft Delta Plan continues. Staff and the consulting team have made significant progress addressing and incorporating suggestions and requested revisions from comments received on the 5th draft Delta Plan into the final staff draft. At this stage, technical information and chapter content are mostly complete with staff enhancing these elements where needed. Staff have worked to develop new graphics where needed and shift text into illustrative sidebars as appropriate.

Several major tasks are still underway and have required additional time to complete, resulting in an anticipated release date for the final staff draft plan of mid-May. These major tasks include: developing a robust and integrated “big picture” story for the plan,

restructuring chapters and reorganizing sections of the plan for better flow and integration, further integrating chapters, finalizing the Executive Summary, and developing new graphics and refining existing ones for the final staff draft Delta Plan.

Follow-up Discussion on Policies and Recommendations

A major focus of the Council meeting on March 29 and 30 was discussion of nine key issues related to comments received on the 5th staff draft Delta Plan. Of the nine issues (a mixture of policies, recommendations and definitions), staff were directed to bring four outstanding items back for further evaluation by and direction from the Council.

These four items include the following:

- A. Water quality in the Delta - newly proposed policy for Water Quality in the Delta chapter (Policy WQ P1)
- B. Locate new development wisely - newly proposed policy for Delta as Evolving Place chapter (Policy DP P1)
- C. Respect local land use - newly proposed policy for Delta as Evolving Place chapter (Policy DP P2)
- D. Compliance with Reasonable and Beneficial use (Revised language for existing recommendation in Water Supply Reliability Chapter- WR R3)

The attached table (Attachment 8c. 1) contains; 1) proposed policy language for the final staff draft; 2) a summary of comments received at the March 29 and 30 meeting from Council members and the public along with staff responses, and; 3) options for addressing these issues.

A. Water Quality in the Delta (WQ P1)

Additional information was requested for discussion of this issue. Staff was asked to provide background information and rationale for this proposed policy.

Special Water Quality Protections for the Delta: Background

Water flow, water quality, water supply, and habitat conditions in the Delta are distinctly different from its watersheds and from San Francisco Bay downstream. It is the most valuable estuary and wetland ecosystem on the west coast of North and South America (Delta Reform Act section 85002) and is the primary habitat for a number of special status species. Many communities in and around the Delta draw their water directly from Delta waterways. Delta waterways also receive urban stormwater, treated wastewater, agricultural drainage, and drainage from managed wetlands. Studies have shown that such discharges can have significant impacts on water quality. These impacts are often more severe near the point of discharge. Stormwater, wastewater, and agricultural drainage discharges into the Delta should be managed so that they do not pose a significant risk to the beneficial uses of water in the Delta, including achievement of the coequal goals.

Recommendations to include a policy to protect water quality come from two sources: in Delta stakeholders and environmental groups. The Delta Protection Commission proposed that the plan include policies to protect water quality for agriculture, industry, and other in Delta uses. Environmental groups like Coalition of Environmental, Environmental Justice, and Fishing Organizations suggested that the water quality chapter of the Delta Plan include new and meaningful actions to address the threat of deteriorating water quality in the Delta.

Problem Statement: A Regulatory Gap – Special Protection for Delta Habitats

Protecting the Delta ecosystem and the reliability of its water supplies depends partly on maintaining, and where necessary, improving the quality of the water that supports its aquatic habitats, fish and wildlife and serves its agricultural, municipal and domestic uses.

Water quality management approaches developed for general application statewide or in other regions may not be sufficient for the unique and dynamic conditions of the Delta, its biological resources, and critical water supply services. Water supplies and habitats for special status species require measures for water quality protection consistent with their importance in achieving the coequal goals.

There is the potential for a regulatory gap to exist between management approaches. One specific example of a potential gap in regulation that may have an important effect on implementation of the Delta Plan is the current lack of special protections for high priority habitats in the Delta. The Delta Plan identifies ecosystem restoration opportunity areas and these same areas are critical habitat for special status species. These areas are given no special protection under current Water Board regulations and policies.

An example of a scenario where special water quality protection might be necessary would be new urban or industrial development adjacent to an area targeted for ecosystem restoration. Water Board regulatory programs do not directly restrict where stormwater is discharged. Stormwater is typically routed to the nearest drainage canal or stream course. If this canal or stream fed into the ecosystem restoration area, there could be significant localized impairment of its habitat quality. While progress has been made on reducing the impacts of urban runoff, it is still often toxic to aquatic life and is the most significant source of pollution in many areas in and outside of the Delta. In this situation, management practices may need to go above and beyond the usual actions appearing in stormwater management plans. While treatment is required for wastewater discharges, similar concerns regarding stormwater, impacts to receiving waters are also warranted. Pesticides, other toxic substances, and pathogenic organisms are often found in wastewater treatment plant effluent unless advanced (tertiary) treatment is used.

As an example of what kinds of special protections might be warranted for specific Delta habitat areas, the special protections recently proposed for Areas of Special Biological

Significance (ASBS) in ocean waters appear to provide reasonable protection for these habitats. These protections basically prohibit, with few exceptions, new discharges of stormwater or wastewater into ASBS. With our current knowledge of the impacts of stormwater and wastewater discharges on aquatic life, it is reasonable and prudent to limit or prohibit such discharges in our “areas of special biological significance”, the ecosystem restoration opportunity areas identified in the Delta Plan.

Protecting Human Health

In addition to protection of ecosystem restoration areas, drinking water supplies can also be affected by stormwater or wastewater discharges. Having agricultural drainage, stormwater, or wastewater discharges in close proximity to drinking water intakes can create an unreasonable public health risk. Pathogenic organisms are common in such discharges. If time, distance, and water treatment do not sufficiently reduce their numbers, they can cause water borne disease outbreaks. Pathogenic organisms are also a risk to people swimming and water skiing. While ambient concentrations of pathogenic organisms are typically low, their numbers can vary widely. Factors which increase pathogen risk are proximity to sources and low receiving water to effluent ratios.

Options for the Delta Plan

Staff proposes four possible options for including this information in the draft Delta Plan (these are also summarized in the attached table). These options include:

Option #1 – Retain as a policy in the draft Delta Plan using proposed language

This policy would highlight the importance of assessing effects on water quality early on in project development and raise awareness of Delta-specific water quality issues. It relies on current standards and regulatory processes of the Regional and State boards for its implementation, but would provide a basis within the Delta Plan for action when there are gaps in the Board’s plans or authorities. This is the broadest of the alternatives and would give the Council more discretion for addressing water quality problems that might arise as the Delta Plan is implemented.

Water Quality in the Delta (WQ P1)

Water quality in the Delta shall be maintained at a level that supports and enhances beneficial uses as identified in the applicable State Water Resources Control Board or Regional Water Quality Control Board water quality control plans.

Proposed actions shall identify any significant negative water quality impacts and shall avoid or mitigate those impacts to the maximum extent practicable. For the purposes of this policy, “avoiding or mitigating negative impacts to the maximum extent practicable” may be demonstrated by compliance with applicable RWQCB and SWRCB water quality plans and policies, waste discharge requirements, and waiver conditions.

Option #2 – Change to a recommendation in the draft Delta Plan

Add a recommendation to the Delta Plan for development of a special protections policy for designated ecosystem restoration opportunity areas in the Delta.

Special Water Quality Protections for the Delta

The SWRCB should develop and adopt a policy for special water quality protections for ecosystem restoration opportunity areas, areas near municipal water supply intakes, and others of the Delta where new or increased discharges of pollutants could impact beneficial uses.

The impacts of this recommendation would depend on the policy developed by the SWRCB. Benefits of this policy would include special protection of water quality in the Delta and relying on the authorities of the SWRCB and RWQCB rather than creating potential concurrent jurisdiction between the Council and these agencies. It would likely increase planning and construction costs for new development occurring adjacent to restoration opportunity areas and might require additional stormwater controls for communities approving such development. If the policy adopted is similar to the special protections for Areas of Special Biological Significance, affected communities would need to implement control measures similar to those required for many coastal communities,

Option #3 – No new policy or recommendation for special protection of Delta water quality

The Council would rely on current laws and regulations for protection of Delta water quality. CEQA analysis of water quality impacts and mitigation measures might help to address problems with discharges into biologically sensitive areas. The Regional Water Board stormwater and wastewater permitting and regulatory programs would also be relied on to reduce the impacts of such discharges. However, neither process is likely to reduce risk to the level of the ASBS discharge restrictions. Water Board regulatory programs do not directly restrict where stormwater or wastewater is discharged. This alternative would also place a considerable burden on Council staff to review CEQA documents and Regional Water Board applications for projects in and near the Delta.

Option #4 - Add water quality protection sub-goal to water quality chapter

Water quality in the Delta shall be maintained at a level that supports and enhances beneficial uses as identified in the applicable SWRCB or RWQCB water quality control plan.

This alternative emphasizes the importance of water quality in achieving the coequal goals and would provide a general statement of the Council's water quality aims, and would provide a basis for the Council to comment on EIRs, request reports from agencies, and take other actions short of creating policies that trigger covered action status for plans, programs and projects that affect Delta water quality.

B. Locate new development wisely (DP P1)

The Council requested further discussion of this proposed policy to determine whether it should remain a policy in the draft Delta Plan or should be changed to a recommendation. Proposed policy language and comments generated on March 20 and 30 by Council members and the public are summarized in the attached table. Proposed language for a recommendation is also provided in the table.

C. Respect Local Land Use (DP P2)

The Council requested further discussion of this proposed policy to determine whether it should remain a policy in the draft Delta Plan or be changed to a recommendation. Proposed policy language and comments generated on March 20 and 30 by Council members and the public are summarized in the attached table. Proposed language for a recommendation is also provided in the table.

D. Compliance with Reasonable and Beneficial Use (WR R3)

This recommendation received extensive comments from stakeholders during both March Council meetings. At the March 29 and 30 meeting, Council members directed staff to work with stakeholders to modify the language in lieu of removing it completely from the draft Delta Plan.

The attached table (Attachment 8c. 1) summarizes the language proposed at the March 29 and 30 Council meeting, a summary of comments provided by Council members and the public, as well as proposed revised language as a result of staff meetings with stakeholders.

E. Bethel Island and flood protection for residential development (Policy RR P2)

In addition, to the four policies and recommendations described above, staff have identified the need to discuss a proposed change to the policy for **Flood protection for residential development in rural areas (RR P2)** as it relates to the Bethel Island, one of the Legacy Communities listed in the Delta Reform Act.

A series of maps illustrating Delta Legacy Communities are included in this staff report. The Council staff, in conjunction with local government staff and relying on existing general plan land use designations, has prepared maps depicting boundaries for those Legacy Communities identified in Water Code Sec. 32301(f). These maps provide boundaries that pertain only to the policies and recommendations of the Delta Plan, rather than constituting boundaries for any other purpose.

As indicated on the attached map for the Legacy Community of Bethel Island this community is contained within Contra Costa County's Urban Limit Line. Also identified on the maps are the 2011 County General Plan land use designations. Land use is

primarily agricultural on the northern portion of the island and residential on the southern portion of the island. Commercial recreation, primarily marinas, is to be located along the boundaries of the island. Bethel Island has several urban development areas identified on the map, including development of Delta Coves which has been approved by the county and partially developed, while others have not yet been approved or permitted.

As background, Bethel Island is a 3,500-acre island located mostly below sea level with approximately 14.9 miles of perimeter levees. Because about .95 miles of these levees are below HMP standard (See DWR Transmittal of Delta Levee Conditions Maps dated January 19, 2012 and on the Council's website at <http://deltacouncil.ca.gov/delta-maps>) the island is exposed to high flood risks and is ineligible for FEMA assistance in the event of a flood. Approximately 2,100 people reside on the island in about 1,300 residential structures, four mobile home parks, or 13 commercial marinas. The Delta Protection Commission 2012 *Economic Sustainability Plan for the Sacramento-San Joaquin Delta* stated that Bethel Island is "well-known as a recreation destination in the Delta... Bethel Island offers residents and visitors retail and restaurants, a golf course, several marinas, and access to some the Delta's best waterways." A single road (Bethel Island Road) links Bethel Island to the mainland at City of Oakley.

In addition to existing residences and resorts, Bethel Island also holds Delta Coves, a proposed 495-unit development on the southern end of the island, which was approved by Contra Costa County in 1973. Although this project was not completed (due in part to its developers bankruptcy), construction of a marina with boat docks and a connection to Sandmound Slough was completed. During development of the 1990 Contra Costa County General Plan, these and other developments on Bethel Island were proposed to be served by water and wastewater by the Bethel Island Municipal Improvement District (BIMID) or other adjacent public services. Therefore, Bethel Island was included in the Urban Limit Line adopted by Contra Costa voters in 1990. Due to inclusion of Bethel Island within the Urban Limit Line, the area was included in the Secondary Zone of the Delta as defined in the Delta Protection Act of 1992.

The general plan requires adequate levees for flood protection and several evacuation routes prior to any new developments on Bethel Island. The overall concept in the general plan is to preserve and enhance the rural and recreational quality of Bethel Island and still allow for planned residential and commercial growth that is related to water oriented recreation. In reviewing the Legacy Community map for Bethel Island it became apparent that policy RR P2 should be revised to better address the significant flood risks on the island.

Currently, **Policy RR P2** states:

New residential development of five or more parcels outside of defined urban and urbanizing areas and those portions of Legacy Communities planned for development must provide for a minimum of 200-year flood protection.

This policy covers a “Proposed Action” that involves new residential developments of five or more parcels outside of defined urban and urbanizing areas and those portions of Legacy Communities planned for development.

As currently drafted the policy may incorrectly indicate the Council is unopposed to new residential development in areas on Bethel Island outside of the “legacy community” on Bethel Island despite the high flood risk it poses because of elevation below sea level, inadequate levees, and restricted ingress/egress. Staff proposes to revise this language to identify Bethel Island as an exception to the policy so that any “Proposed Actions” related to residential development on Bethel Island outside of the Legacy Community would be covered by this policy.

The revised language would be:

New residential development of five or more parcels outside of defined urban and urbanizing areas and Legacy Communities must provide for a minimum of 200-year flood protection. For these purposes, areas on Bethel Island outside of the “Legacy Community” on Bethel Island are considered “outside of defined urban and urbanizing areas.”

This policy covers a “Proposed Action” that involves new residential developments of five or more parcels outside of defined urban and urbanizing areas (including, for these purposes Bethel Island outside of its Legacy Community), and Legacy Communities.

With this policy, the Delta Plan will reinforce provisions of the current Contra Costa County general plan that limit opportunities for new development on Bethel Island, including requirements for adequate levees for flood protection and designated evacuation routes.

Review of Appendices in 5th and Final Staff Draft Delta Plan

Attachments 8d. 1-10 contain a list of appendices included in the 5th staff draft Delta Plan and the final staff draft Delta Plan. Several new appendices are highlighted as part of this report and include;

- New appendix on Adaptive Management
- New maps of Delta Legacy Communities
- New map of State Flood Control Facilities

In the final staff draft Delta Plan, elements from the chapter on Adaptive Management in the 5th draft will be merged with the Governance chapter and a large portion of the Adaptive Management information will be shifted to the appendices. This new structure reduces the chapter's length while still providing detailed technical information on the Council's adaptive management process for readers who require it.

A series of maps illustrating Delta Legacy Communities are included in this staff report. These maps indicate the boundaries for the legacy communities including General Plan's land use designations and spheres of influence of neighboring cities, where appropriate. Also included as a new appendix and as part of this report is a map outlining the State's flood control facilities within the Delta. This map also illustrates floodways designated by the Central Valley Flood Protection Board, which are referenced by the Delta Plan's Policy RR P3: Floodway Protection.

Review of Graphics in 5th and Final Staff Draft Delta Plan

Attachments 8e 1-4 contain a list of graphics included in the 5th staff draft Delta Plan and the final staff draft Delta Plan and several of the new graphics are highlighted in this report and included in the attachments.

These new graphics are:

- A map of the Delta and Suisun Marsh that will appear in Chapter 1 (Introduction) of the draft plan and used throughout the plan as needed to illustrate key areas referred to in policies within individual chapters
- A summary timeline of near- and mid-term actions identified in the Delta Plan, as well as other critical plans, programs and actions undertaken by various local, state and federal agencies and required to implement the Delta Plan and to achieve the co-equal goals
- A sample of the timelines that will be included in each policy chapter containing near- and mid-term actions related to policies and recommendations within the chapter and critical to implementing the Delta Plan and achieving the co-equal goals.

Process

This report and the attachments present information requested by the Council at the March 29 and 30 meeting, as well as new information related to the status of the final staff draft Delta Plan. Staff will present information and request direction from the Council on policies and recommendations presented here. The remaining items are primarily for informational purposes and reference material for the Council. Subsequent discussion may result from Council member review of this report and its attachments.

List of Attachments

- 8a. Attachment 1: Summary of Major Delta Plan Comments Received in Comment Letters on Delta Plan DPEIR
- 8c. Attachment 1: Proposed Alternatives for Policies and Recommendations for the Draft Delta Plan
Attachment 2: Legacy Community of Bethel Island (map)
- 8d. Attachment 1: List of Delta Plan 5th and Final Staff Drafts Appendices
Attachment 2: Legacy Community of Knightsen (map)
Attachment 3: Legacy Community of Freeport (map)
Attachment 4: Legacy Communities of Locke and Walnut Grove (map)
Attachment 5: Legacy Community of Hood (map)
Attachment 6: Legacy Community of Ryde (map)
Attachment 7: Legacy Community of Courtland (map)
Attachment 8: City of Isleton (map)
Attachment 9: Legacy Community of Clarksburg (map)
Attachment 10: City of Rio Vista (map)
Attachment 11: State Flood Control Facilities within the Legal Boundary of the Delta
- 8e. Attachment 1: Delta Plan 5th and Final Staff Drafts Figures and Sidebars
Attachment 2: Delta Map
Attachment 3: Summary Timeline for Final Staff Draft Delta Plan (draft)
Attachment 4: Chapter Timeline (draft)

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