



### Action Item

## **Consideration of Authorization to Commence California Environmental Quality Act Review of the Draft Ecosystem Amendment as the Proposed Project**

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**Summary:** Staff will present a revised draft amendment to Chapter 4 of the Delta Plan, *Protect, Restore, and Enhance the Delta Ecosystem* (“Ecosystem Amendment”) after input and comments received on the November 2019 preliminary public review draft from the public, Delta Independent Science Board (Delta ISB), and external peer review (May 2020 draft). The presentation will summarize the comments received on the November 2019 preliminary public review draft and discuss how the comments were addressed in the May 2020 draft. Staff is seeking Council authorization to initiate environmental review under the California Environmental Quality Act (CEQA) using the May 2020 draft as the proposed project.

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### **Summary of Requested Action**

Staff requests authorization to initiate CEQA environmental review of the proposed project, using the May 2020 draft Ecosystem Amendment (Attachments 2 - 9) as the proposed project. The proposed project consists of eight (8) documents:

- The **Chapter 4 narrative** (Attachment 2; which includes policies and recommendations);
- Three regulatory appendices:
  - **Appendices 3A and 4A and New Definitions** (Attachment 3; two appendices in one combined document);
  - **Appendix 8A** (Attachment 4);
- Four technical appendices:
  - **Appendix Q1** (Attachment 5);
  - **Appendix Q2** (Attachment 6);
  - **Appendix Q3** (Attachment 7);
  - **Appendix Q4** (Attachment 8); and
- **Appendix E**, Performance Measures for the Delta Plan (Attachment 9).

If the Council authorizes staff as requested, a Notice of Preparation of an Environmental Impact Report (NOP) will be published, identifying that a Program Environmental Impact Report (PEIR) will be prepared for the proposed project. The May 2020 draft Ecosystem Amendment, presented to the Council as Attachments 2 – 9, would be described as the proposed project and would be analyzed alongside a reasonable range of alternatives in the PEIR. Six performance measure (PM) datasheets (Attachment 10) that provide detailed methods for proposed new and revised output/outcome PMs have also been developed to inform the CEQA environmental review of the Ecosystem Amendment

project. A redline version of the proposed draft amendments to Chapter 4 policies and recommendations is provided in Attachment 11 for reference.

### **Background**

The Sacramento-San Joaquin Delta Reform Act of 2009, California Water Code, sections 85000-85350, (Delta Reform Act) charges the Council with furthering California's coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta and Suisun Marsh (together, "the Delta" [see Wat. Code section 85058; 23 Cal. Code Regs. section 5001(k)]) ecosystems, to be achieved in a manner that protects and enhances the unique characteristics of the Delta as an evolving place. (Wat. Code section 85054.) To that end, the Council has adopted the Delta Plan, regulatory portions of which became effective on September 1, 2013, and are set forth in Title 23 of the California Code of Regulations, sections 5001-5016.

The Delta Plan was adopted in 2013 while the Bay Delta Conservation Plan (BDCP) planning process was underway. The BDCP proposed a conservation program that would have established a reserve system and implemented large, landscape-scale ecosystem restoration within the Delta.<sup>1</sup> In accordance with California Water Code, section 85320(e), Chapter 4 of the Delta Plan was originally developed based on the expectation that the BDCP would be incorporated into the Delta Plan. As stated in the 2013 Delta Plan, "Success of ecosystem restoration depends on considering and addressing all stressor categories as well as completing and implementing the BDCP."<sup>2</sup>

In May 2015, State and federal agencies shifted their approach from species recovery-based ecosystem protection and restoration strategies under the BDCP to a more focused set of mitigation projects required under the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) Biological Opinions (BiOps) for the operation of the State Water Project (SWP) and Central Valley Project (CVP). This effort, known as the EcoRestore initiative, has enabled significant progress in meeting implementation deadlines for projects that previously faced significant planning and permitting delays. Implementation of these projects is critical to offset the impacts of the SWP and CVP to threatened and endangered fish species. However, these actions alone do not fully address the impaired condition of the estuary, which is the cumulative result of past physical changes (e.g., reclamation of marshland for agricultural use, construction and operation of federal, State, and local water management infrastructure). A more comprehensive approach to protecting, restoring, and enhancing the Delta ecosystem is required to achieve the Delta Reform Act's goals.

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<sup>1</sup> The BDCP conservation measures were not limited to reserve establishment and ecosystem restoration. They also identified actions such as nonnative species control, stormwater management, remediation of unscreened water diversions, and illegal fish harvest reduction through game warden support.

<sup>2</sup> Delta Stewardship Council (Council). 2013. Protect, Restore, and Enhance the Delta Ecosystem, Delta Plan Chapter 4. p. 148. Available at: <http://www.deltacouncil.ca.gov/pdf/delta-plan/2013-ch-04.pdf>.

Following the shift from the BDCP to EcoRestore, the Council assessed the need to revisit the Delta Plan for an amendment to Chapter 4.<sup>3</sup> At the September 2016 Council meeting, staff presented an informational item, “*Laying a Foundation for a Proposed Ecosystem Amendment*.”<sup>4</sup> During this presentation, representatives from the San Francisco Estuary Institute presented the report, *A Delta Renewed: A Guide to Science-based Ecological Restoration in the Delta*; and representatives from the California Department of Fish and Wildlife presented the *Delta Conservation Framework*. Council members discussed the need to integrate these initiatives and measures into the Delta Plan and expressed support for these efforts as a basis for a potential amendment to Chapter 4.

At the October 2017 Council meeting, staff presented an informational item, “*Approach and Timeline for Delta Plan Ecosystem Amendment*” to explore the need for, and potentially develop, an Ecosystem Amendment to the Delta Plan. During this presentation, staff described a proposed approach for the amendment, including stakeholder consultation and best available science considerations.<sup>5</sup>

Throughout 2017 and 2018, Council staff conducted listening sessions with a range of stakeholders<sup>6</sup>; consulted with State, federal, and local agencies, Delta residents, and stakeholders; presented at public Council meetings; and received input from Councilmembers and Delta ISB members. Pursuant to a September 2017 memorandum from the Delta ISB,<sup>7</sup> Council staff developed three science synthesis papers<sup>8</sup> comprehensively documenting the best available scientific and technical information to inform the amendment. Staff used the synthesis papers and Delta ISB feedback on the synthesis papers to develop an approach to the Ecosystem Amendment along with preliminary draft revisions to the Chapter 4 core strategies, policies, and recommendations, which were presented to the Council at the April 2019 Council meeting.<sup>9</sup>

After the April 2019 Council meeting, staff incorporated Councilmember feedback into the draft revised core strategies, policies, and recommendations that were presented, and prepared a preliminary draft of the Ecosystem Amendment, including a revised Chapter 4 narrative, technical and regulatory appendices, and PMs (June 2019 preliminary draft). Staff presented the June 2019 preliminary draft during a workshop at

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<sup>3</sup> In 2018, the Council separately adopted a Delta Plan amendment to address conveyance, storage, and operations of the water supply system, which had also been a component of the BDCP.

<sup>4</sup> The staff report and presentation for the September 2016 Council meeting are available upon request to [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>5</sup> The staff report and presentation for the October 2017 Council meeting are available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>6</sup> A comprehensive list of stakeholders was included in the July 2018 Council staff report, which is available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>7</sup> Memorandum available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>8</sup> The synthesis papers are available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>9</sup> The staff report and presentation for the April 2019 Council meeting are available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

the June 2019 Council meeting<sup>10</sup> where Councilmembers provided additional input. Staff subsequently incorporated that input into the November 2019 preliminary public review draft described below.

In August 2019, pursuant to Water Code Section 85308(a), as part of the development of the November 2019 preliminary public review draft, Council staff requested that the Delta ISB provide feedback on the preliminary draft PM datasheets and preliminary draft revisions to Appendix E. The Delta ISB discussed its comments at its September 12, 2019 meeting, and submitted a comment letter dated September 27, 2019 to the Council.<sup>11</sup> The comment letter specifically recommended that the Council consider the use of an independent body or review structure to assess the PMs. Subsequently, Council staff revised the PM datasheets and Appendix E to address Delta ISB comments and planned for an independent scientific peer review of the PM datasheets.

### **November 2019 Preliminary Public Review Draft**

On November 21, 2019, the Council released the preliminary public review draft Ecosystem Amendment for a forty-five (45) day public comment period, which was extended to a sixty (60) day period. The November 2019 preliminary public review draft of the Ecosystem Amendment, consisted of: the Chapter 4 narrative (which included the revised and new regulatory policies and recommendations), three regulatory appendices, four technical appendices, a PMs appendix (Appendix E), and six PM datasheets.<sup>12</sup> The public review period closed at 5:00 PM on January 21, 2020. Simultaneously, Council staff solicited government agency and public comments on this draft, as well as input from the Delta ISB pursuant to Water Code section 85308(a). Simultaneously, the Delta Science Program facilitated an independent scientific peer review on select PM datasheets.

The nature of the comments received on the November 2019 preliminary public review draft and PM datasheets is described briefly below. Edited Attachment 1 to this staff report presents the comments received and proposed changes to the revised draft Ecosystem Amendment resulting from the comments, which have been incorporated into the May 2020 draft presented to the Council today.

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<sup>10</sup> The staff report and presentation for the June 2019 Council meeting is available upon request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>11</sup> A compilation of individual comments discussed by the Delta ISB at the September 12, 2019 meeting is available at: <http://www.deltacouncil.ca.gov/pdf/isb/meeting-materials/2019-09-09-isb-eco-pm-discussion.pdf> The September 27, 2019 comment letter from the Delta ISB is available at: <https://deltacouncil.ca.gov/pdf/isb/products/2019-09-27-isb-delta-plan-pm-comments.pdf>

<sup>12</sup> The preliminary draft Ecosystem Amendment documents are available on the Council website at: <http://www.deltacouncil.ca.gov/delta-plan/amendments>.

## Public Comments

The Council received sixteen (16) comment letters representing a wide range of interests, including advocacy groups; scientific consultants; and federal, State, regional, and local government agencies.<sup>13</sup>

- Federal and State agencies that submitted comments are: California Department of Fish and Wildlife (CDFW); California Department of Water Resources (DWR); Delta Protection Commission (DPC); Sacramento-San Joaquin Delta Conservancy (SSJDC); State Water Resources Control Board (SWRCB); and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation).
- Local and regional agencies that submitted comments are: Central Delta Water Agency (CDWA), Local Agencies of the North Delta (LAND), Sacramento Regional County Sanitation District (Regional San), Solano County Department of Resource Management (Solano County), State Water Contractors (SWC), and Suisun Resource Conservation District (Suisun RCD).
- Other organizations that submitted comments are: California Water Research on behalf of California Sportfishing Protection Alliance, California Water Impact Network, and AquAlliance; Cramer Fish Sciences; Public Policy Institute of California (PPIC); and Restore the Delta.

The feedback received from agencies, organizations, and members of the public was positive and constructive. Many reviewers voiced support for the amendments to the Chapter 4 narrative, policies and recommendations, and appendices. The Council also received requests for clarification and additional information, as well as offers of additional information and suggested revisions to the narrative, core strategies, policies, recommendations, PMs (Appendix E and/or datasheets), or institutional principles.

## Independent Scientific Peer Review Comments

At the request of the Council's Planning Division, the Delta Science Program convened a group of six independent scientific peer reviewers<sup>14</sup> to review the datasheets for five of the proposed new or revised Ecosystem Amendment PMs, including PM 4.6 (Doubling Goal for Central Valley Chinook Salmon Natural Production); PM 4.12 (Subsidence Reversal for Tidal Reconnection); PM 4.13 (Barriers to Migratory Fish Passage); PM 4.15 (Seasonal Inundation); and PM 4.16 (Acres of Natural Communities Restored).<sup>15</sup>

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<sup>13</sup> Copies of the comment letters received are available on request from [archives@deltacouncil.ca.gov](mailto:archives@deltacouncil.ca.gov).

<sup>14</sup> The independent scientific peer reviewers were: Rebecca Buchanan (University of Washington), Kristin Byrd (U.S. Geological Survey), Joshua Collins (San Francisco Estuary Institute), Stephen Crooks (Silverstrum Climate Associates), Anna Sturrock (University of California, Davis), and John Williams (retired).

<sup>15</sup> The proposed new PM 4.14 Increase Funding for Restoring Ecosystem Function was not included in the scientific peer review because it is based on funding reported through the certification of consistency process, and is not based on a scientifically-derived metric.

Each reviewer evaluated a subset of the five PMs and assessed whether the respective measures included quantitative metrics and measurable targets, are based on best available scientific information, and provide appropriate and informative evaluations of progress toward the attainment of the proposed Ecosystem Amendment goals and strategies.<sup>16</sup> Each PM received three external reviews.

Peer review comments were transmitted on January 7, 2020, and published on the Council's website on January 10, 2020.<sup>17</sup>

### **Delta ISB Comments**

Pursuant to Delta Reform Act section 85308(a), the Delta ISB reviewed the November 2019 preliminary public review draft and provided its independent science advice to ensure both the use of best available scientific information, and that past comments from the Delta ISB were adequately addressed. The Delta ISB discussed its review and comments at its December 13, 2019 and January 10, 2020 meetings.<sup>18</sup>

After the January 10 meeting, Council staff provided the Delta ISB members copies of the external peer reviews of the PMs. Council staff requested that Delta ISB members provide further comments on the November 2019 preliminary public review draft in light of the peer review comments, including on the PMs that received external peer review. Delta ISB discussed its comments on the peer reviews at the January 30, 2020 Delta ISB meeting.<sup>19</sup> The Delta ISB transmitted an overview of its comments on the November 2019 preliminary public review draft, along with specific comments from individual Delta ISB members, in a memorandum to Council staff dated February 4, 2020.<sup>20</sup>

The feedback received from Delta ISB members was both positive and constructive. Many members voiced their support for the amended Chapter 4 narrative. Some members requested clarification, offered/requested additional information, or suggested revision(s) to content within the narrative, core strategies, PM datasheets, or institutional principles.

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<sup>16</sup> The charge to the independent peer reviewers is available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2020-01-03-charge-to-the-reviewers-performance-measures-ecosystem-amendment.pdf>

<sup>17</sup> Copies of the six peer reviews and additional information related to the independent scientific review panel is available on the Council website at: <http://www.deltacouncil.ca.gov/delta-plan/independent-scientific-peer-review-delta-plan-ecosystem-amendment>.

<sup>18</sup> A compilation of individual comments discussed by the Delta ISB at the December 13, 2019 meeting is available at: <https://deltacouncil.ca.gov/pdf/isb/meeting-materials/2019-12-10-isb-eco-amendment-discussion.pdf>. A memorandum provided by the Delta ISB at the January 10, 2020 meeting is available at: <https://deltacouncil.ca.gov/pdf/isb/meeting-materials/2020-01-06-isb-eco-amendment-discussion.pdf>

<sup>19</sup> A draft memorandum discussed by the Delta ISB at the January 30, 2020 meeting is available at: <https://deltacouncil.ca.gov/pdf/isb/meeting-materials/2020-01-24-isb-draft-memo-eco-amendment.pdf>

<sup>20</sup> A copy of the final Delta ISB Memorandum to the Council is available on the Council website at: <http://www.deltacouncil.ca.gov/pdf/isb/products/2020-02-04-isb-eco-amendment-review.pdf>.

### **Staff Recommendation**

Staff requests authorization to initiate CEQA environmental review of the Ecosystem Amendment, using the May 2020 draft described in this report (provided as Attachments 2 - 9) as the proposed project, inclusive of any changes recommended by the Council at today's meeting.

### **Requested Action**

Staff is requesting that the Council authorize staff to:

1. Commence the environmental review process for the Ecosystem Amendment pursuant to CEQA using the May 2020 draft as set forth in Attachments 2 through 9 to this staff report as the project description for the proposed project for the CEQA review; and
2. Include as part of the proposed project the recommendations described in Attachment 1 (page #) regarding the effective date for proposed amended regulatory policies ER P2, ER P3, and ER P4; and
3. Use the Performance Measure Data Sheetss in Attachment 10 to this staff report as documentation supporting the use of best available science for the Ecosystem Amendment Performance Measures; and
4. Make revisions to the proposed project description set forth in Attachments 2 through 9 and to the supporting documentation in Attachment 10 pursuant to the Council's input at today's meeting; and
5. Make revisions as necessary to complete the CEQA environmental review, including the PEIR, for the proposed project; and
6. Take any such steps and actions as are necessary to carry out the CEQA environmental review of the proposed project authorized by this action.

### **Next Steps**

- If the Council provides the requested authorization, staff will publish a Notice of Preparation (NOP) for the proposed project.
- After publication of the NOP, Council staff would hold one CEQA scoping meeting during the NOP public comment period to receive comments from agencies and the public on the scope and content of the PEIR.
- Following the scoping meeting, staff would commence preparation of the PEIR.
- Staff will continue to periodically update the Council on the CEQA process at publicly noticed meetings of the Council.

**Fiscal Information**

Not applicable.

**List of Attachments**

Attachment 1: Summary of Comments Received and Staff Responses

Attachment 2: May 2020 Draft Chapter 4, *Protect, Restore, and Enhance the Delta Ecosystem* (which includes policies and recommendations)

Attachment 3: May 2020 Draft Regulatory Requirements to Demonstrate Consistency with Regulatory Policies and New Definitions. Appendix 3A, Appendix 4A, and Definitions

Attachment 4: May 2020 Draft Appendix 8A. Priority Locations to Evaluate Physical Expansion of Channel Width

Attachment 5: May 2020 Draft Appendix Q1. Methods Used to Update Ecosystem Restoration Maps Using New Digital Elevation Model and Tidal Data

Attachment 6: May 2020 Draft Appendix Q2. Key Considerations and Best Available Science for Protecting, Restoring, and Enhancing the Delta Ecosystem

Attachment 7: May 2020 Draft Appendix Q3. Identifying, Mapping, and Quantifying Opportunities for Landscape-Scale Restoration in the Sacramento-San Joaquin Delta

Attachment 8: May 2020 Draft Appendix Q4. Conservation and Recovery Plan Target Species

Attachment 9: May 2020 Draft Appendix E. Performance Measures for the Delta Plan

Attachment 10: May 2020 Draft Performance Measure Datasheets

Attachment 11: May 2020 Draft Amendments to Chapter 4 Policies & Recommendations, Redlined Relative to Existing Chapter 4 Policies and Recommendations

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