

**Delta Protection Commission Meeting
November 17, 2022**

AGENDA ITEM 12: Review and approve draft comment letter on the Delta Levee Investment Strategy Administrative Procedure Act Rulemaking Process

Prepared by: Kirsten Pringle

Presented by: Kirsten Pringle

Requested Action: Approve draft comment letter on the Delta Levee Investment Strategy Administrative Procedure Act Rulemaking Process

Type of Action: Action Item

Background: Since 2014, The Delta Stewardship Council (Council) has worked to amend Chapter 7 of the Delta Plan (*Reduce Risk to People, Property and State Interests in the Delta*) and Delta Plan Policy RRP1 to prioritize state investment in Delta levee improvements, as called for in Water Code section 95306. This effort is known as the Delta Levees Investment Strategy (DLIS). The final DLIS was included in the Delta Plan amendments that were adopted by the Council in April 2018.

In 2019, the Council initiated a rulemaking process to adopt the DLIS and the Delta Plan amendments into regulation, which would include amending Delta Plan Policy RRP1. This amendment would assign a priority of very-high, high, or other to each island or tract located within the legal boundaries of the Delta and Suisun Marsh. Additionally, under the proposed amendment, the California Department of Water Resources (DWR) would fund levee improvement projects at very-high priority islands or tracts before funding levee improvement projects at high or other priority islands or tracts. If available funds are sufficient to fully fund levee improvements at the very-high priority islands or tracts, then levee improvements on high priority islands or tracts may be provided, and after those projects have been fully funded, then levee improvement projects at other priority islands or tracts may be funded.

The Council held a public comment period on the DLIS rulemaking process from July to August 2019. Also in 2019, DWR published new Light Detection and Ranging (or LiDAR) elevation imaging of the Delta and Suisun Marsh. The Council issued a Notice of Decision Not to Proceed with the proposed regulation on March 26, 2020 to allow for more time to evaluate the LiDAR information to determine whether the priorities identified in the DLIS needed to be updated.

In August 2022, the Council reinitiated the DLIS Rulemaking Process with updated priorities. The Council is holding a written public comment period through November 16, 2022 and holding a public hearing on November 17, 2022. The Council has provided the Commission a written

comment time extension to 5:00 PM on Monday, November 21, 2022 to allow the Commission members to provide input on the comment letter drafted by staff.

The Commission has been an active stakeholder in development of the DLIS and the rulemaking process since 2014. The Commission has submitted five comment letters on the DLIS and two comment letters on the initial RRP1 proposed rulemaking. In January 2017, the Commission approved a letter (by unanimous vote) requesting a Council commitment to system-wide improvement of all Delta levees to the DWR Bulletin 192-82 standard before any funding prioritization for higher levels of levee improvement on “Tier 1” priority islands and tracts; the Council declined to include this request.

In August 2019, the Commission Executive Director expressed concern that under proposed Council draft regulations, certain levee rehabilitation activities routinely funded by the Delta Levees Maintenance Subventions Program (Levee Subventions) would be subject to the prioritization scheme. Throughout the development of DLIS prioritization, it was always understood from the Council that Levee Subventions activities would not be subject to the prioritization scheme. This concern was expressed again in a February 2021 letter sent to the Council by Delta levee interests, including the Commission, and a July 2021 letter approved by the Commission. The Levee Subventions concern remains true today.

Commission staff recommend submitting a comment letter during the rulemaking process reiterating our concern about the funding for Levee Subventions and asking for the definition of “levee operation and maintenance” to include levee rehabilitation, which would exclude levee rehabilitation activities from the DLIS prioritization tiers.

Recommended Action: Commission staff requests the Commission approve the draft comment letter on the Delta Levee Investment Strategy Administrative Procedure Act Rulemaking Process.

Relationship to Vision 2030 (Commission strategic plan):

Levee and Emergency Response (Strategic Theme)

- L.2 Advocate for reliable funding for Delta levee maintenance and improvements.
 - 2.1 Seek pro-Delta implementation of levee funding in state bond acts and other sources.
 - 2.2 Advocate with all agencies to prioritize levee funding for minimum DWR Bulletin 192-82 level of protection for the entire Delta.
 - 2.3 Promote a levee funding strategy that incorporates financial support from private and public sources, including contributions from previous non-contributors (“beneficiaries pay”).

2.4 Pursue Delta-supported improvements to the Delta Levee Subvention and Special Projects Programs.

2.5 Advocate at the federal, state, and local level to ensure availability of levee repair and recovery funding for damages after Delta flood events.