

Covered Actions Regulatory Process

Central Valley Flood Protection Board



Cindy Messer, Deputy Executive Officer, Planning
Delta Stewardship Council

October 24, 2014




DELTA STEWARDSHIP COUNCIL






Delta Reform Act and Covered Actions

-  Water Code section 85057.5
 - *Provides definition of – and criteria for – covered actions*
 - *Defines certification process for ensuring actions are consistent with Delta Plan provisions*
 - *Requires Council to establish process for early consultation*
-  Water Code section 85225.30
 - *Requires Council to develop and adopt appeals procedures*


Delta Reform Act and Covered Actions

- 
- Act defines a covered action as :
- ...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code (CEQA) that meets **all** of the following conditions:
- *At least partly in Delta and/or Suisun Marsh*
 - *Carried out, approved, or funded by state or local agency*
 - *Significantly impacts coequal goals or implementation of government-sponsored flood control program*
 - *Covered by one or more provisions of the Delta Plan*





Overview of the Delta Plan

-  2009 Delta Reform Act created Council and required comprehensive, long-term management plan for Delta
-  Law provided specific direction for what Plan should include
-  Enforceable regulatory authority, requires state and local agencies to be consistent with Delta Plan
-  Council unanimously adopted Delta Plan on May 16, 2013
-  OAL approved Delta Plan's 14 regulatory policies as legally-enforceable regulations on Sept. 1, 2013




Provisions of the Delta Plan

-  14 regulatory policies of the Delta Plan
 - *13 technical policies (1 or more may apply to a covered action)*
 - 2 related to water supply (WR P1, WR P2)
 - 5 related to ecosystem (ER P1-5)
 - 2 related to Delta as Place (DP P1, DP P2)
 - 4 related to flood risk reduction (RR P1 – 4)
 - *1 administrative policy applies to all covered actions (G P1)*

Covered Actions: Consistency Certification

-  State and local agencies must certify covered action is consistent with Delta Plan
-  Certifications of consistency must include detailed findings of consistency with the regulatory policies implicated by the action
-  Certifications must be filed electronically
-  Upon receipt Council will post for 30-day public review

Covered Actions: Early Consultation

-  The Council established process for conducting early consultation with local or state agency representatives and project proponents ahead of filing consistency certification
-  Council staff from planning and science programs offer nonbinding advice regarding proposed activity and its consistency with Delta Plan provisions
-  Provides opportunity to coordinate with project proponents and other engaged entities

Covered Actions: Appeal Process and Procedures

- 🌀 Council developed administrative procedures governing appeals (Delta Plan, Appendix D) that have force of law
- 🌀 Appeal must be filed electronically within 30 days of certification
- 🌀 Appeal limited to consistency with Delta Plan provisions and based only on detailed findings provided (administrative record)
- 🌀 Council may hold a one or more hearings to determine if action is consistent with Delta Plan
- 🌀 Appeals can be dismissed without a hearing if incomplete or based on issue(s) outside Council's purview

Covered Actions: Online Forms

The screenshot shows the Delta Stewardship Council website. The browser address bar displays <http://deltacouncil.ca.gov/covered-actions>. The website header includes the Delta Stewardship Council logo and a navigation bar with links: Home, The Council, Delta Plan, Science Program, Science Board, Get Involved, The Delta, Library, and News. Below this is a secondary navigation bar with links: DELTA PLAN, P-EIR, DELTA PLAN REGULATIONS, PRGM PERFORMANCE, COVERED ACTIONS, and LITIGATION. The 'Delta Plan' and 'COVERED ACTIONS' links are circled in red. The main content area is titled 'Covered Actions' and contains the following text:

The Delta Reform Act of 2009 (Act) established a self-certification process for demonstrating consistency with the Delta Plan. This means that state and local agencies proposing to undertake a qualifying action, called a "covered action" in the Act, must submit to the Council, a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan.

Per Water Code section 85057.5 "covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

- Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- Will be carried out, approved, or funded by the state or a local public agency.
- Is covered by one or more provisions of the Delta Plan.
- Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

Any state or local public agency proposing to undertake a covered action is encouraged to consult with the council at the earliest possible opportunity, preferably no later than 30 days before submitting its certification to the Council.

The tabs below provide detailed information for the different phases of the covered actions process. Click on the tabs below to preview additional details about those phases.

At the bottom of the page, there is a navigation bar with four links: Covered Action Determination, Early Consultation, Certification of Consistency, and Appeal Process. A red arrow points to the 'Covered Action Determination' link. To the right of the links is a link that says 'Open All | Close All'.

On the right side of the page, there is a 'KEYWORD SEARCH' section with a search box and a 'Search' button. Below this is a 'SUBSCRIBE TO DSC' section with a form to enter an email address and a 'SUBSCRIBE' button. Below that is a 'CURRENT MONTH' section with a calendar for October. At the bottom right is an 'IMPORTANT DOCUMENTS' section with links to 'Appeals Procedures' and 'Latest Schedule for Delta Plan'.

Delta Levees Investment Strategy

Central Valley Flood Protection Board

Cindy Messer, Deputy Executive Officer, Planning
Delta Stewardship Council

October 24, 2014



DELTA STEWARDSHIP COUNCIL

Delta Reform Act of 2009

85305. (a) *The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and **strategic levee investments***

85306. *The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan **priorities for state investments in levee operation, maintenance, and improvements** in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees*




Why are we doing this project?

Working with other agencies and the public, the Council is developing a ***Delta Levees Investment Strategy*** to:

- 🌊 Comply with statute to reduce risks to people, property, and State interests
- 🌊 Contribute to achieving the coequal goals for the Delta

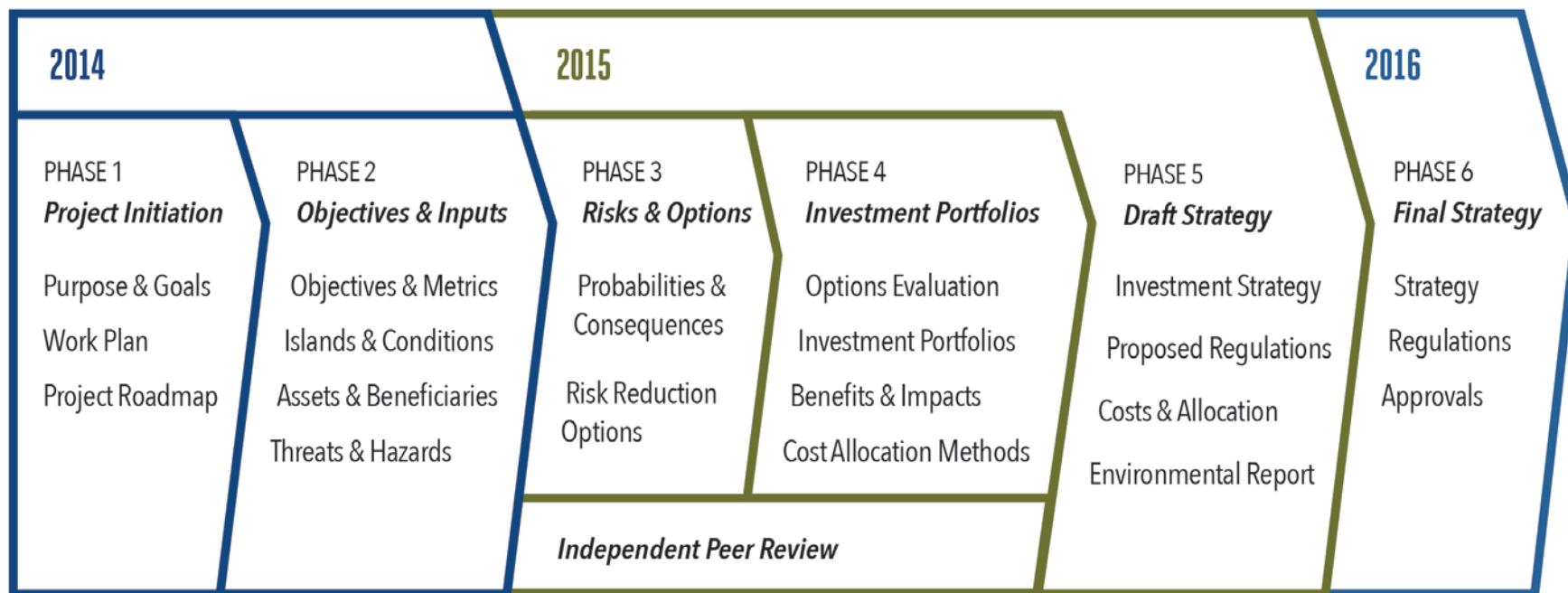


Outcomes of the Delta Levees Investment Strategy

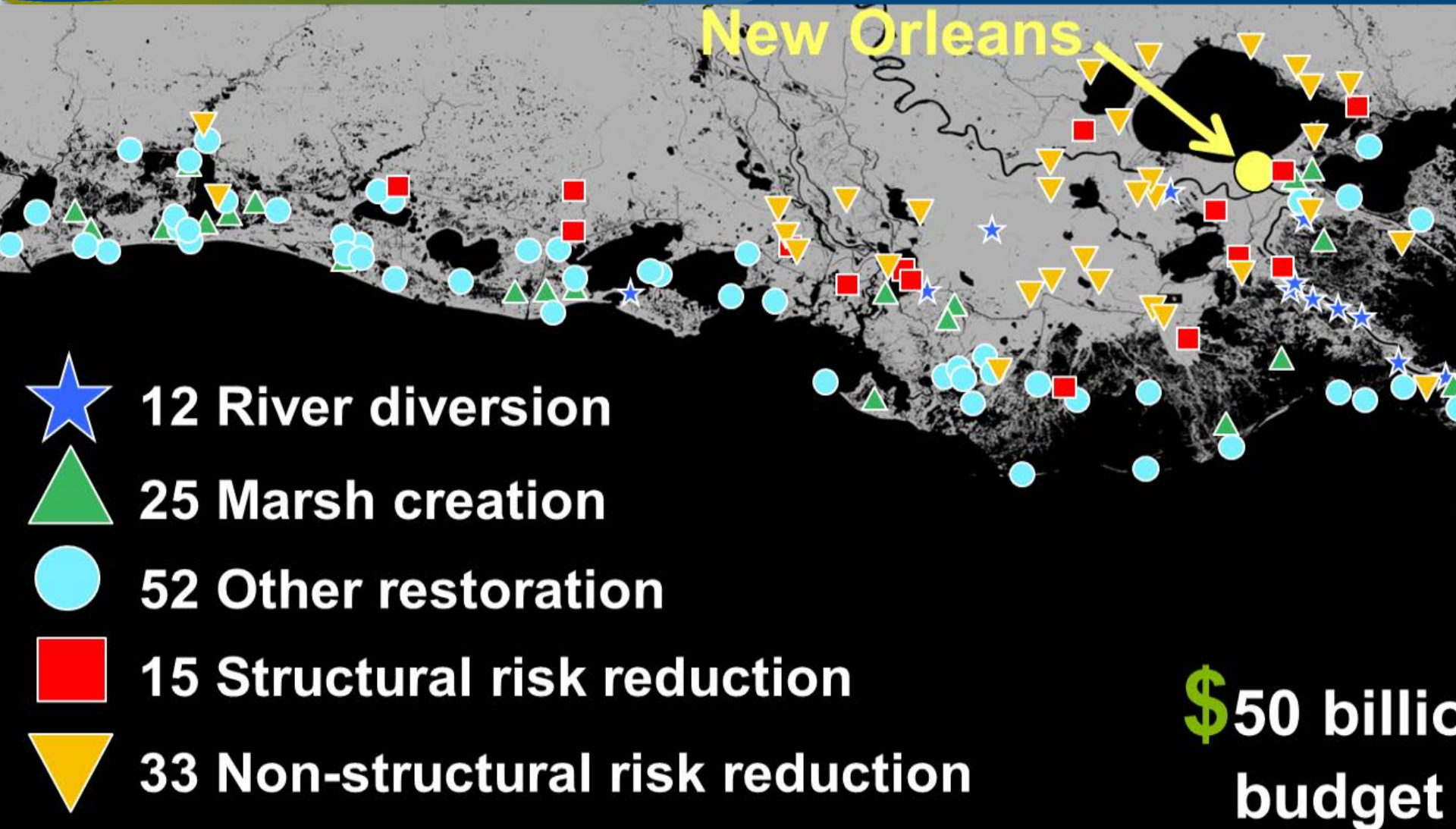
-  Comprehensive levee investment & risk-reduction strategy will result in:
 - *Tiered ranking of investments for Delta islands & tracts*
 - *Recommend levels of improvements for Delta levees*
 - *Allocation of costs based on beneficiaries*
-  Update Delta Plan provisions
-  Computer-based decision-making tool for future use

How We Plan to Develop the Strategy

Project Planning Process



Which Projects Should Louisiana Choose to Maximize Risk Reduction and Land Building?











Decision-making Tool: Delta Levee Investment Strategy

Interactive visualizations



Revised specifications





Stakeholders

-  Elected officials
-  Local, state and federal agencies (incl. emergency response)
-  Reclamation districts
-  Delta residents, businesses, and landowners
-  Infrastructure, transportation, and utility managers
-  Water users
-  Fish, wildlife and habitat related groups
-  Others who benefit from the Delta levee system

Engagement Techniques and Activities

- 🌊 Technical coordination with agencies and specialists: *build a solid technical foundation*
- 🌊 Meetings and briefings with various interests, agencies, and elected officials: *understand issues and objectives*
- 🌊 Public meetings and workshops: *inform, deliberate on options and tradeoffs*
- 🌊 Website and information materials: *inform and report*

Role of Central Valley Flood Protection Board

-  Board has diverse set of duties enabling it to oversee planning and improvement of both the Delta's project- and non-project levees
-  Board and DWR have discretion to determine how to spend state money on project and non-project levees
-  Board regulates encroachments within the State-federal system and some other Board designated floodways
-  Delta Reform Act specifically calls for consultation with the Board in prioritizing levee investments

Questions?

www.deltacouncil.ca.gov



DELTA STEWARDSHIP COUNCIL