



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

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Posted Date: June 23, 2021

## **Notice of Public Hearing and Adoption Meeting**

The Delta Stewardship Council (Council) will hold a public hearing, shall consider proposed findings (presented in a revised Staff Draft Determination), and adopt findings pursuant to Water Code section 85225.25, regarding the appeals of the certification of consistency submitted by the California Department of Water Resources (Department) on February 22, 2021 regarding the Lookout Slough Tidal Habitat Restoration and Flood Improvement (Lookout Slough) Project, Certification Number C20215. The proposed findings will be distributed to the Service List and posted to the Council's covered action web page separately prior to the public hearing. The remote hearing will take place at the time, date, and webcast location listed below.

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**Day 1: July 15, 2021 commencing at ~9:00am**

**Day 2: July 16, 2021 commencing at ~9:00am**

### **Remote Participation**

In accordance with Governor Newsom's June 11, 2021 Executive Order N-08-21, the Council will provide for remote participation by councilmembers, staff, and members of the public. As such, this hearing will be conducted entirely remotely via Cal-Span and Zoom: there will not be a public, in-person access location.

To observe this hearing, visit Cal-Span (<https://www.cal-span.org>) and select the Council hearing. For optimal quality, use the Microsoft Edge or Mozilla Firefox browsers. The hearing may also be observed via Zoom (<https://us02web.zoom.us/j/89439868424>) or telephone at **(669) 900-6833** with webinar ID **894 3986 8424**. Attendees will be automatically muted upon joining the hearing.

Members of the public who are interested in providing comments should join the hearing via Zoom and contact the Council Clerk via email at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov) or telephone at (916) 798-9817, providing their name and organization (if applicable). When called on by the Council chair, the attendee will be unmuted and be able to provide oral comment. (This process is the same for

Zoom and telephone attendees.) Alternatively, comments may be called-in or e-mailed for the Council Clerk to read aloud to councilmembers during the hearing.

Questions, concerns, or issues with the webcast? Please contact the Council's public participation team via email at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov) or telephone at (916) 798-9817.

### **Webcast:**

The public hearing will be webcast on Cal-Span at <https://www.cal-span.org>. Select the Delta Stewardship Council meeting from the list under "Next Live State Meetings."

### **Direct Link to Meeting:**

You can join the meeting directly as an Attendee at:

<https://us02web.zoom.us/j/89439868424>

### **Phone Number:**

Please call (669) 900-6833

Webinar ID: **894 3986 8424**

## **Background**

The Delta Reform Act of 2009 requires that a state or local public agency that proposes to undertake a covered action must, prior to initiating the implementation of that action, submit a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, § 85225.)

On February 22, 2021, the Department submitted a certification of consistency to the Council regarding the Lookout Slough Project, which is a covered action.

The Delta Reform Act allows any person who claims that a covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on one or both of the coequal goals<sup>1</sup> or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of a certification of

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<sup>1</sup> "Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code § 85054)

consistency submitted to the Council. (Wat. Code § 85225.10, subd. (a); [Administrative Procedures Governing Appeals](#) § 6).

The following parties (Appellants) submitted timely appeals of the certification of consistency, which Council staff have deemed filed pursuant to Section 7 of the Council's [Administrative Procedures Governing Appeals](#)<sup>2</sup> (Administrative Procedures):

<b>Appeal Number</b>	<b>Appellant Name</b>	<b>Effective Date</b>
C20215-A1	Liberty Island Access	March 24, 2021
C20215-A2	Solano County Water Agency	March 24, 2021
C20215-A3	Reclamation District 2060 & Reclamation District 2068	March 24, 2021
C20215-A4	Central Delta Water Agency	March 24, 2021

These appeals raise appealable issues within the Council's jurisdiction.

The Delta Reform Act therefore requires that the Council hold a hearing within 60 days of the effective filing date of the appeals, and that the Council makes its decision on the appeals within 60 days of the hearing. (Wat. Code, § 85225.20.)

The Council held a two-day remote-access public hearing on May 20-21, 2021. The Department, the Appellants, the Delta Protection Commission, and all other interested persons were invited to participate. Upon conclusion of the hearing, the Presiding Officer directed Council staff to prepare proposed findings regarding the appeals based on the record and comments received on the matter.

Council staff have prepared draft findings regarding the appeals of the certification of consistency and made them available for public review and comment on June 18, 2021.<sup>3</sup> The Appellants, the Department, and all other interested persons are invited to submit written comments regarding the June 18, 2021 Staff Draft Determination and Exhibits A, B, and C electronically to: [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov) and copy the [Service List](#).<sup>4</sup> To be

<sup>2</sup> <http://deltacouncil.ca.gov/docs/covered-actions-delta-plan/appeals-procedures>

<sup>3</sup> The June 18, 2021 Staff Draft Determination is available at: <https://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=36f4c7d4-b428-4f46-81c6-59baf4a1f122>.

<sup>4</sup> The Service List is available at: <https://deltastewardshipcouncil.createsend1.com/t/r-l-tlhrtkly-dixjridyd-o/>

considered for the revised Staff Draft Determination that will be presented to the Council at the July 15-16, 2021 hearing, written comments on the Staff Draft Determination must be received no later than **12:00 PM on June 28, 2021**.<sup>5</sup>

### Purpose

The purpose of the public hearing will be to receive comments from the parties (which will be on the agenda as presentations) and from all other interested persons (which will be on the agenda as public comment) on the proposed findings regarding the appeals.<sup>6</sup> Upon conclusion of the public hearing, the Council will deliberate and consider the revised Staff Draft Determination, and will take action to adopt findings pursuant to Water Code section 85225.25.

### Substantial Evidence Scope of Review

The scope of the Council's review in this matter is limited to whether or not the February 22, 2021, Certification of Consistency for the Lookout Slough Project submitted by the Department was supported by substantial evidence in the record before the Department at the time it submitted the certification. (Wat. Code § 85225.25.) The Council may issue additional guidance prior to the hearing in order to assist the parties in focusing their written and oral hearing presentations.

### Hearing Procedures

This hearing will be held during a regular meeting of the Council. The Council anticipates taking formal action following the hearing. A meeting notice with the detailed agenda for the public hearing will be issued no later than 10 days prior to July 15, 2021 and posted to the Council's website:

<https://deltacouncil.ca.gov/council-meetings>. The hearing will be conducted in accordance with Chapter 3 of the Delta Reform Act (Wat. Code §§ 85225-85225.30) and the Council's Administrative Procedures. There will be no sworn testimony or cross-examination, but the Council and its staff may ask clarifying questions. Council Chair Susan Tatayon will serve as the Presiding Officer.

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<sup>5</sup> Included in the Staff Draft Determination are Exhibits A, B and C that address evidentiary items not provided in the record submitted by the Department. Exhibit C addresses items recommended for denial of admission and the reason(s) for denial (see Appeals Procedures § 10 and § 29). The Council will review items on Exhibit C for admissibility if the missing documentation/information is provided no later than 12:00PM on Monday, June 28, 2021 to: [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov).

<sup>6</sup> A track-changes version of the Staff Draft Determination showing the changes made to the June 18, 2021 draft will be distributed to the service list and posted to the on the Council's Lookout Slough Project [covered action web page](#) prior to the public hearing.

## Presentation Order and Time Limits

The order of presentation at the hearing shall be as follows:

### **Day 1 (July 15, 2021):**

1. California Department of Water Resources
2. Delta Protection Commission
3. Liberty Island Access (Appellant C20215-A1)
4. Solano County Water Agency (Appellant C20215-A2)
5. Reclamation District 2060 & Reclamation District 2068 (Appellant C20215-A3)
6. Central Delta Water Agency (Appellant C20215-A4)

### **Day 2 (July 16, 2021):**

7. All Other Interested Persons (Public Comment Period)

The Department will be allowed 40 minutes for oral presentation. The Delta Protection Commission and each Appellant Group will each be allowed 10 minutes for oral presentation. Time may not be divided into opening and closing statements.

During the public comment period, which is on Day 2 (July 16, 2021), all other interested persons will each be allowed three (3) minutes for public comment and will not be allowed to cede those three minutes to any of the parties or the Delta Protection Commission. The Presiding Officer retains discretion to shorten the public comment time limit prior to the commencement of the public comment period as necessary.

Detailed information on how to provide oral or written public comment during the public comment period will be available in the notice of the public meeting as well as at the start of the hearing. Written public comments will be read by the Council Clerk upon request, subject to the three (3) minute time limit. If you would like to provide written public comment in advance of the hearing and have the Council Clerk read your comment during the public comment period, please include the request with your written comment and submit your written comment electronically to [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov).

### **The Council requests that public comments focus on the proposed findings.**

On both days of the hearing, time will be allowed for questions by the Council members or Council staff.

If you have questions or need reasonable accommodation due to a disability, please contact the Delta Stewardship Council's Meeting Services office at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov) or (916) 798-9817.

### Oral Presentations

The Department and the Appellants, along with the Delta Protection Commission, may provide oral presentations at the hearing regarding the appeals. **The Council requests that oral presentations focus on the proposed findings.**

Any materials to be presented by the parties or the Delta Protection Commission at the hearing, including presentation slides and other visual displays, must be submitted to the Council no later than **Monday, July 12, 2021 at 5:00 PM**. Please submit any presentation materials to: [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov), and **copy all parties on the [Service List](#)**.<sup>7</sup> Please include "C20215" in the subject line of any email.

To help you have an orderly presentation, the Council Clerk requests that the titles of the submitted electronic presentations indicate the party name (e.g., Department, Appellant, Delta Protection Commission, other).

### Record

The Department submitted and certified the record supporting the certification of consistency pursuant to Administrative Procedures Section 4.b. This is the record that must contain substantial evidence to support the Department's findings within the certification of consistency. (See Wat. Code, § 85225.25.)

Record documents are available on the Council's Lookout Slough Project [covered action web page](#). You may also request record documents by emailing [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov) or calling (916) 798-9817 and identifying the name(s) of the document(s) you are seeking. If you request the entire record for the Lookout Slough Project, a copy of the record will be provided through a download link.<sup>8</sup>

### Prohibition on Ex Parte Communications

The Council's appellate proceedings are subject to the prohibition on ex parte communications. (Gov. Code § 11430.10 et seq; Administrative Procedures §§ 26-

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<sup>7</sup> The Service List is available at: <https://deltastewardshipcouncil.createsend1.com/t/r-l-tlhrtkly-dixjridyd-o/>

<sup>8</sup> Party requests to augment the record, along with any documents submitted by the parties, are also available on the Council's Lookout Slough Project [covered action web page](#).

28.) Parties and interested persons, including any employees or representatives, may not communicate directly or indirectly with Council members or Council staff regarding any issue in this proceeding, without notice and opportunity for all parties to participate in the communication. (Gov. Code § 11430.10.) The only exceptions to this prohibition are communications required for disposition of an ex parte matter specifically authorized by statute, or communications concerning a matter of procedure or practice that is not in controversy. (Gov. Code § 11430.20.)

Please see the Council's Notice regarding Ex Parte restrictions for this matter, posted on the Council's Lookout Slough Project [covered action web page](#) for more details.

If you have any questions concerning matters of procedure or practice that are not in controversy, please contact [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov). Please do not contact Council members directly.

### Electronic Mailing List

After this initial notice, all future correspondence and information from the Council regarding this matter will be sent via electronic mail to the parties listed in the Service List (Attachment A hereto), and posted to the Council's Lookout Slough Project [covered action web page](#). Please make submittals to the Council electronically to: [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov), and **copy all parties on the [Service List](#)**.<sup>9</sup> Please include "C20215" in the subject line of any email.

Any interested person may receive future correspondence from the Council on this matter by subscribing to the Council's electronic mailing list. You may subscribe to the Council's electronic mailing list here: <https://deltacouncil.ca.gov> (scroll to "Get Updates" and click "Subscribe").

If you are unable to receive electronic mail, you must send your request to receive a hard copy of future correspondence via U.S. mail to the following address:

Clerk to the Council  
ATTN: Lookout Slough Project C20215  
Delta Stewardship Council  
980 9<sup>th</sup> Street, 15<sup>th</sup> Floor  
Sacramento, CA 95814

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<sup>9</sup> The service list is available at: <https://deltastewardshipcouncil.createsend1.com/t/r-l-tlhrtkly-dixjridyd-o/>

If the current contact information we have for you does not contain an email address and you have access to email, please send your email address as soon as possible to [LookoutSloughCert@deltacouncil.ca.gov](mailto:LookoutSloughCert@deltacouncil.ca.gov). Please include "C20215" in the subject line of any email.

You should act as soon as possible to ensure you receive all future correspondence.