

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 1, 2009

AMENDED IN ASSEMBLY MARCH 12, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 13

**Introduced by Assembly Member Salas
(Principal coauthor: Assembly Member Huffman)
(Coauthor: Assembly Member Caballero)**

December 1, 2008

~~An act to add Division 29 (commencing with Section 80500) to the~~
An act to add Chapter 5 (commencing with Section 85390) to Part 3 of
Division 35 of the Water Code, relating to the Sacramento-San Joaquin
Delta.

LEGISLATIVE COUNSEL'S DIGEST

AB 13, as amended, Salas. Sacramento-San Joaquin Delta Conservancy.

Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state.

This bill would establish the Sacramento-San Joaquin Delta Conservancy to restore, maintain, and enhance ecosystems, including habitats, wildlife corridors, native species, and open space, in the Sacramento-San Joaquin Delta ~~and Suisun Marsh~~, and to develop and implement projects to address the economic viability of the Delta region, consistent with a ~~comprehensive specified Delta sustainability program~~ *Plan*.

The bill would become operative only if specified related bills of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Division 29 (commencing with Section 80500)~~
2 ~~is added to the Water Code, to read:~~

3
4 ~~DIVISION 29. SACRAMENTO-SAN JOAQUIN DELTA~~
5 ~~CONSERVANCY~~

6
7 ~~CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS~~

8
9 ~~80500. This division shall be known, and may be cited, as the~~
10 ~~Sacramento-San Joaquin Delta Conservancy Act.~~

11 ~~80501. The Legislature finds and declares all of the following:~~

12 ~~(a) The Sacramento-San Joaquin Delta is a unique and valued~~
13 ~~area, warranting recognition and special legal status from the State~~
14 ~~of California. The Delta is a place of natural beauty, with historic~~
15 ~~towns, productive farming, and close-knit communities. The Delta~~
16 ~~is an integral part of the largest estuary on the West Coast of the~~
17 ~~Americas, connecting rivers originating in the Sierra Nevada to~~
18 ~~the Pacific Ocean. The Delta is also an indispensable part of the~~
19 ~~Pacific Flyway. These values should be preserved and protected.~~

20 ~~(b) Numerous federal, state, and local agencies have overlapping~~
21 ~~and conflicting legal responsibility and authority to protect the~~
22 ~~Delta, but no single agency has the authority for restoration of the~~
23 ~~Delta ecosystem. In recent years, the Department of Fish and Game~~
24 ~~has reported substantial declines in the Delta's ecosystem health.~~
25 ~~Several agencies, including the Department of Water Resources,~~
26 ~~have participated in interagency efforts to address the Delta~~
27 ~~ecosystem crisis, but recent years have seen interagency conflict~~
28 ~~over the manner in which to best protect the Delta ecosystem.~~

29 ~~(c) In 2008, the Delta Vision Blue Ribbon Task Force, created~~
30 ~~pursuant to Executive Order S-17-06, adopted a comprehensive,~~
31 ~~strategic plan for the Delta. The strategic plan states that a healthy~~

1 Delta ecosystem and sustainable Delta water supply are of coequal
2 importance.

3 ~~(d) The Delta Vision Blue Ribbon Task Force recommends the~~
4 ~~statutory creation of a Delta conservancy to implement ecosystem~~
5 ~~restoration projects to achieve the ecosystem goals of the strategic~~
6 ~~plan or a subsequent comprehensive plan for Delta sustainability.~~

7 80502. For the purposes of this division, the following terms
8 have the following meanings:

9 (a) ~~“Bay Delta Conservation Plan” means the plan prepared~~
10 ~~pursuant to the Planning Agreement regarding the Bay Delta~~
11 ~~Conservation Plan, dated October 6, 2006.~~

12 (b) ~~“Blue Ribbon Task Force” means the Delta Vision Blue~~
13 ~~Ribbon Task Force created by Executive Order S-17-06.~~

14 (c) ~~“Board” means the governing board of the Sacramento-San~~
15 ~~Joaquin Delta Conservancy.~~

16 (d) ~~“Comprehensive Delta sustainability program” or “program”~~
17 ~~means a comprehensive Delta sustainability program intended to~~
18 ~~restore and manage habitat and restore ecosystem function in the~~
19 ~~Sacramento-San Joaquin Delta and Suisun Marsh and to preserve~~
20 ~~the economic viability of the Delta consistent with the plan adopted~~
21 ~~by the Delta Ecosystem and Water Council pursuant to Section~~
22 ~~80505.~~

23 (e) ~~“Conservancy” means the Sacramento-San Joaquin Delta~~
24 ~~Conservancy.~~

25 (f) ~~“Delta” means the Sacramento-San Joaquin Delta as defined~~
26 ~~in Section 12220.~~

27 (g) ~~“Delta counties” means the Counties of Contra Costa,~~
28 ~~Sacramento, San Joaquin, Solano, and Yolo.~~

29 (h) ~~“Habitat conservation plan” means a plan prepared under~~
30 ~~Chapter 10 (commencing with Section 2800) of Division 3 of the~~
31 ~~Fish and Game Code, or a plan prepared under Section 10 of the~~
32 ~~federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).~~

33 (i) ~~“Local public agency” means a city, county, district, or joint~~
34 ~~powers authority.~~

35 (j) ~~“Nonprofit organization” means a private, nonprofit~~
36 ~~organization that qualifies for exempt status under Section~~
37 ~~501(c)(3) of Title 26 of the United States Code, and that has among~~
38 ~~its principal charitable purposes preservation of land for scientific,~~
39 ~~recreational, scenic, or open-space opportunities; protection of the~~
40 ~~natural environment, or preservation or enhancement of wildlife;~~

1 preservation of cultural and historical resources; or, efforts to
2 provide for the enjoyment of public lands.

3 (k) ~~“Regional conservancy” means a conservancy within the~~
4 ~~Natural Resources Agency.~~

5 (l) ~~“Suisun Marsh” means the Suisun Marsh as defined in~~
6 ~~Section 29101 of the Public Resources Code.~~

7
8 ~~CHAPTER 2. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY~~

9
10 ~~80505.—~~

11 *SECTION 1. Chapter 5 (commencing with Section 85390) is*
12 *added to Part 3 of Division 35 of the Water Code, to read:*

13
14 *CHAPTER 5. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY*

15
16 85390. (a) There is in the Natural Resources Agency the
17 Sacramento-San Joaquin Delta Conservancy, which is created as
18 a state agency for the purposes of, and to carry out the authority
19 ~~given to it under this division.~~ *granted to the conservancy by this*
20 *chapter.*

21 (b) The conservancy shall, as its primary purpose, restore,
22 maintain, and enhance Delta ecosystems, including habitats,
23 wildlife corridors, native species, and open space, to ensure their
24 viability, diversity, and sustainability, ~~pursuant to the~~
25 ~~comprehensive Delta sustainability plan adopted by the Delta~~
26 ~~Ecosystem and Water Council. Consistent with that plan pursuant~~
27 *to the Delta Plan. Consistent with the Delta Plan,* the conservancy
28 shall also develop and implement projects to address the economic
29 viability of the Delta region.

30 ~~80506.~~

31 85390.10. (a) The board shall consist of 11 voting members
32 as follows:

33 (1) The Secretary of the Natural Resources Agency, or his or
34 her designee.

35 ~~(2) The Director of Finance, or his or her designee.~~

36 *(2) The Secretary of Food and Agriculture, or his or her*
37 *designee.*

38 (3) Five members, each of whom shall represent one of the Delta
39 counties, selected by the board of supervisors of each county. An

1 alternate shall be selected for each of these members by the board
2 of supervisors of each Delta county.

3 (4) Two public members appointed by the Governor.

4 (5) One public member appointed by the Speaker of the
5 Assembly.

6 (6) One public member appointed by the Senate Committee on
7 Rules.

8 ~~(b) The board shall also include the following ex officio,
9 nonvoting members:~~

10 ~~(1) The Director of Fish and Game, or his or her designee.~~

11 ~~(2) The Chair of the Delta Protection Commission, or his or her
12 designee.~~

13 ~~(3) An executive officer of the San Francisco Bay Conservation
14 and Development Commission, or his or her designee.~~

15 ~~(c) The conservancy shall request nonvoting participation by
16 appropriate federal agencies.~~

17 ~~(d)~~

18 (b) Each Delta member, as described in paragraph (3) of
19 subdivision (a), shall serve a five-year term, except for those
20 initially selected. The initial members shall select from among
21 themselves one member to serve one year, one member to serve
22 two years, one member to serve three years, one member to serve
23 four years, and one member to serve five years. The Delta members
24 may be reappointed at the end of their term and any vacancy during
25 a term of office may be filled by the appointing entity.

26 ~~(e)~~

27 (c) Each public member shall be appointed for a four-year term,
28 except that one of the public members initially appointed by the
29 Governor shall serve a one-year term, one of the public members
30 initially appointed by the Speaker of the Assembly shall serve a
31 two-year term, and one of the public members initially appointed
32 by the President Pro Tempore of the Senate shall serve a three-year
33 term. Public members may be reappointed at the end of their term
34 and any vacancy during a term of office may be filled by the
35 appointing entity.

36 ~~(f)~~

37 (d) The public members shall be selected to reflect the diversity
38 of statewide interests as they relate to the authorities and mission
39 of the conservancy. Public members shall be compensated for
40 attendance at regular meetings of the board at the rate of one

1 hundred dollars (\$100) per day and shall be reimbursed for actual
2 reasonable and necessary expenses for attending meetings and
3 carrying out the duties of their office.

4 ~~(g)~~

5 (e) The members shall elect annually from among them a chair
6 and vice chair and other officers as necessary.

7 ~~(h)~~

8 (f) A majority of the members shall constitute a quorum for the
9 transaction of the business of the board, and a majority vote of the
10 members present at a meeting where a quorum exists shall be
11 binding with respect to all matters acted on by the board.

12 ~~(i)~~

13 (g) The board shall determine the qualifications of, and appoint,
14 an executive officer of the conservancy, who shall serve at the
15 pleasure of the board. The executive officer shall appoint other
16 staff as necessary to execute the powers and functions provided
17 for under this division.

18 ~~(j)~~

19 (h) The board may rent or own real property and equipment
20 pursuant to applicable statutes and regulations.

21 ~~(k)~~

22 (i) The board may enter into contracts with private entities and
23 public agencies to procure consulting and other services to achieve
24 the purposes of this division.

25 ~~80507.~~

26 85390.20. The board shall establish and coordinate the
27 conservancy's activities in consultation with an advisory
28 committee. The advisory committee shall include, but shall not be
29 limited to, one representative of each of the following:

30 ~~(a) The Department of Water Resources.~~

31 ~~(b) The State Coastal Conservancy.~~

32 ~~(c) The State Water Resources Control Board.~~

33 ~~(d) The Suisun Resource Conservation District.~~

34 ~~(e) The Yolo Basin Foundation.~~

35 ~~(f) Each reclamation district with responsibility for levees~~
36 ~~located within the Delta.~~

37 ~~CHAPTER 3. POWERS, DUTIES, AND LIMITATIONS~~

38 ~~(a) The Delta Protection Commission.~~

39 ~~(b) The Department of Fish and Game.~~

40 ~~(c) The Department of Water Resources.~~

1 (d) *The San Francisco Bay Conservation and Development*
2 *Commission.*

3 (e) *The State Coastal Conservancy.*

4 (f) *The State Water Resources Control Board.*

5 (g) *The Suisun Resource Conservation District.*

6 (h) *The Yolo Basin Foundation.*

7 (i) *Each reclamation district with responsibility for levees*
8 *located within the Delta.*

9 ~~80510.~~

10 85390.30. (a) Except as provided in subdivision (b), the
11 jurisdiction and activities of the conservancy are limited to the
12 ~~Delta and Suisun Marsh.~~

13 (b) The conservancy may take or fund an action outside of the
14 ~~Delta and Suisun Marsh~~ if the board makes all of the following
15 findings:

16 ~~(1) The project is consistent with the ecosystem goals of the~~
17 ~~comprehensive Delta sustainability program.~~

18 (1) *The project is consistent with the Delta Plan.*

19 (2) The project will result in measurable benefits to the Delta
20 ecosystem.

21 (3) The conservancy has given notice to, and will coordinate
22 with, the respective local jurisdictions, and, if applicable, ~~regional~~
23 *other* conservancies where the project is located.

24 (c) This division does not limit, expand, or otherwise affect the
25 authorities and responsibilities of any local public agency, state
26 department or agency, or agency of the United States, except that
27 the conservancy has the authority to review and approve ecosystem
28 projects located within the boundaries of the Delta proposed for
29 implementation by any other state agency, to determine consistency
30 with the ~~comprehensive Delta sustainability program~~ *Delta Plan*.

31 The conservancy shall not assume responsibility for any activity
32 of any other state agency, unless that state agency is authorized
33 by law, and offers, to transfer the responsibility to the conservancy.

34 (d) (1) The conservancy has no power to regulate land use or
35 any activities on land, except as provided in paragraph (2).

36 (2) This section does not limit the authority of the conservancy,
37 as the owner of an interest in land, or pursuant to an agreement
38 with, or a license or grant of management authority from, the owner
39 of an interest in the land, or as specified in an agreement with a
40 person or entity to which the conservancy has transferred an interest

1 in land, or which has accepted a grant to manage an interest in
2 land for the purposes of this division and to exercise all rights
3 incident to that ownership or conferred upon the conservancy by
4 an agreement. A determination by the conservancy, pursuant to
5 this paragraph, that the management of an interest in land is
6 consistent with the purposes of this division may be ~~appealed to~~
7 ~~the Delta Ecosystem and Water Council. Upon appeal, the Delta~~
8 ~~Ecosystem and Water Council shall have final authority to make~~
9 ~~that determination.~~ *appealed to the council. Upon appeal, the*
10 *council shall have final authority to make that determination.*

11 (3) *Before acquiring land, the conservancy shall arrange for*
12 *long-term funding of the maintenance and management of that*
13 *land.*

14 ~~80511.~~

15 ~~85390.40.~~ (a) The conservancy shall implement habitat
16 restoration and management projects to achieve the ecosystem
17 goals of the ~~comprehensive Delta sustainability program.~~ *Delta*
18 *Plan.*

19 (b) The conservancy shall cooperate, coordinate, and consult,
20 as necessary or appropriate, with any other agency or department
21 of the state, local public agency, or agency of the United States
22 having regulatory or other responsibility related to the authorities
23 and mission of the conservancy.

24 (c) The conservancy shall take whatever actions are reasonably
25 necessary and incidental to the management of lands under its
26 ownership or control.

27 (d) The conservancy shall improve, restore, and enhance lands
28 under its ownership or control consistent with the purpose for
29 which the land was acquired.

30 (e) The conservancy shall coordinate or assist in the
31 implementation of local, state, and federal ecosystem projects,
32 including the Bay Delta Conservation Plan and other overlapping
33 or adjacent habitat conservation plans.

34 (f) (1) The conservancy shall develop and implement projects,
35 ~~consistent with the comprehensive Delta sustainability program,~~
36 *consistent with the Delta Plan*, to maintain the economic and social
37 viability of the Delta region.

38 (2) Projects developed and implemented pursuant to this
39 subdivision may include, but shall not be limited to, projects that
40 do one or more of the following:

1 (A) Provide recreational opportunities and appropriate public
2 access to natural resources in the Delta.

3 (B) Protect the viability of agriculture and Delta communities
4 in the Delta, including physical and business infrastructure.

5 (C) Promote wildlife-friendly agriculture.

6 (D) Promote agricultural practices that reduce greenhouse gas
7 emissions and increase carbon sequestration.

8 (E) Support the growth of agricultural tourism.

9 (F) Protect the viability of the Delta's legacy communities.

10 (G) Address the impacts from the implementation of the ~~program~~
11 *activities of the conservancy*.

12 (g) The conservancy shall coordinate with appropriate scientific
13 entities to conduct necessary scientific studies.

14 (h) The conservancy shall assume responsibility, if offered, for
15 local, state, federal, and private lands, or the management of those
16 ~~lands, within the Delta or Suisun Marsh.~~ *lands within the Delta*
17 *provided the conservancy arranges for long-term financing of the*
18 *maintenance and management of that land.*

19 ~~80512.~~

20 85390.50. (a) In order to carry out the duties and
21 responsibilities of this division, the conservancy may do all of the
22 following:

23 (1) Accept, acquire, and hold real property, and interests in real
24 property, from willing sellers or transferors in the name of, and
25 on behalf of, the state for the purposes of implementing the
26 ~~comprehensive Delta sustainability program.~~ *Delta Plan.*

27 (2) Make grants or loans to local public agencies, nonprofit
28 organizations, state agencies, and federal agencies, including grants
29 and loans for the acquisition of real property, or interests in real
30 property, from willing sellers or transferors.

31 (3) Use funds to directly undertake, or contract with public
32 agencies and nonprofit organizations to undertake, appropriate
33 actions identified in the program.

34 (4) Enter into agreements and intergovernmental agreements
35 with public agencies, nonprofit organizations, and private entities
36 for the implementation, including construction and management,
37 of appropriate projects identified in the program.

38 (5) Acquire and hold any permits or other authorizations
39 necessary to carry out its responsibilities.

(6) Implement projects or grant funds to address flood issues associated with conservancy projects.

(b) To the extent practicable, the conservancy shall use easements and cooperative agreements to achieve ecosystem restoration goals.

(c) The conservancy does not have the power of eminent domain.

~~80513. On or before December 1 of each year, the board~~

85390.60. The board shall prepare and adopt a strategic plan to implement this chapter in a manner consistent with the Delta Plan.

85390.70. On or before December 1 of each even-numbered year, the board shall report to the Legislature and Governor on the progress towards implementation of the measures identified in the comprehensive Delta sustainability program intended to restore Delta Plan intended to restore and manage habitat in the Delta and Suisun Marsh.

~~80514.~~

85390.80. (a) The conservancy's expenses may be paid from the conservancy's operating budget, if one is provided for, and other funding sources available to the conservancy. Up to 5 percent of any funds appropriated by the Legislature may be expended to pay the administrative costs of the conservancy's expenses. Any funds appropriated by the Legislature to the conservancy may be used for grants or direct expenditure. The conservancy shall comply with all applicable provisions of law related to the appropriated funds in administering any funds appropriated by the Legislature.

(b) The conservancy also may accept both of the following:

(1) Funds provided by participants in the Bay Delta Conservation Plan or other habitat conservation plans for implementation of those plans, to be managed consistent with those plans.

(2) Gifts, donations, bequests, devises, subventions, grants, rents, royalties, and other funds from public and private funds.

SEC. 2. This bill shall only become operative if Assembly Bill 39, Assembly Bill 49, Assembly Bill 900, Senate Bill 12, Senate Bill 229, and Senate Bill 457 of the 2009–10 Regular Session of the Legislature are also enacted and become effective on or before January 1, 2010.

1
2 CORRECTIONS:
3 Text—Page 6.
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