

AMENDED IN ASSEMBLY NOVEMBER 1, 2009

CALIFORNIA LEGISLATURE—2009—10 SEVENTH EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member Bass

October 29, 2009

~~An act to add Division 35 (commencing with Section 85000) to the Water Code, relating to the Sacramento-San Joaquin Delta. An act to add Division 35 (commencing with Section 85000) to, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to the Sacramento-San Joaquin Delta, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Bass. ~~Delta Stewardship Council. Sacramento-San Joaquin Delta Reform Act of 2009: California Bay-Delta Authority Act.~~

(1) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require a

state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

The bill would establish the Delta Independent Science Board, whose members would be appointed by the council. The bill would require the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

The bill would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(2) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(3) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$5,388,000,000, of which \$1,000,000,000 is made available

to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate \$28,000,000 of these funds to the Department of Water Resources for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) This bill would take effect only if AB 8, AB 10, and AB 11 of the 2009–10 7th Extraordinary Session of the Legislature are enacted and become effective.

~~Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta.~~

~~This bill would create the Delta Stewardship Council as an independent agency of the state.~~

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

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

- 1 SECTION 1. Division 26.4 (commencing with Section 79400)
- 2 of the Water Code is repealed.

1 SEC. 2. Division 35 (commencing with Section 85000) is added
2 to the Water Code, to read:

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DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA
REFORM ACT OF 2009

PART 1. GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

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11 85000. This division shall be known, and may be cited, as the
12 Sacramento-San Joaquin Delta Reform Act of 2009.

13 85001. The Legislature finds and declares all of the following:

14 (a) The Sacramento-San Joaquin Delta watershed and
15 California’s water infrastructure are in crisis and existing Delta
16 policies are not sustainable. Resolving the crisis requires
17 fundamental reorganization of the state’s management of Delta
18 watershed resources.

19 (b) In response to the Delta crisis, the Legislature and the
20 Governor required development of a new long-term strategic vision
21 for managing the Delta. The Governor appointed a Blue Ribbon
22 Task Force to recommend a new “Delta Vision Strategic Plan”
23 to his cabinet committee, which, in turn, made recommendations
24 for a Delta Vision to the Governor and the Legislature on January
25 3, 2009.

26 (c) By enacting this division, it is the intent of the Legislature
27 to provide for the sustainable management of the Sacramento-San
28 Joaquin Delta ecosystem, to provide for a more reliable water
29 supply for the state, to protect and enhance the quality of water
30 supply from the Delta, and to establish a governance structure
31 that will direct efforts across state agencies to develop a legally
32 enforceable Delta Plan.

33 85002. The Legislature finds and declares that the
34 Sacramento-San Joaquin Delta, referred to as “the Delta” in this
35 division, is a critically important natural resource for California
36 and the nation. It serves Californians concurrently as both the hub
37 of the California water system and the most valuable estuary and
38 wetland ecosystem on the west coast of North and South America.

39 85003. The Legislature finds and declares all of the following:

1 (a) Originally, the Delta was a shallow wetland with water
2 covering the area for many months of the year. Natural levees,
3 created by deposits of sediment, allowed some islands to emerge
4 during the dry summer months. Salinity would fluctuate, depending
5 on the season and the amount of precipitation in any one year;
6 and the species that comprised the Delta ecosystem had evolved
7 and adapted to this unique, dynamic system.

8 (b) Delta property ownership developed pursuant to the federal
9 Swamp Land Act of 1850, and state legislation enacted in 1861,
10 and as a result of the construction of levees to keep previously
11 seasonal wetlands dry throughout the year. That property
12 ownership, and the exercise of associated rights, continue to
13 depend on the landowners' maintenance of those nonproject levees
14 and do not include any right to state funding of levee maintenance
15 or repair.

16 (c) In 1933, the Legislature approved the California Central
17 Valley Project Act, which relied upon the transfer of Sacramento
18 River water south through the Delta and maintenance of a more
19 constant salinity regime by using upstream reservoir releases of
20 freshwater to create a hydraulic salinity barrier. As a result of the
21 operations of state and federal water projects, the natural salinity
22 variations in the Delta have been altered. Restoring a healthy
23 estuarine ecosystem in the Delta may require developing a more
24 natural salinity regime in parts of the Delta.

25 85004. The Legislature finds and declares all of the following:

26 (a) The economies of major regions of the state depend on the
27 ability to use water within the Delta watershed or to import water
28 from the Delta watershed. More than two-thirds of the residents
29 of the state and more than two million acres of highly productive
30 farm land receive water exported from the Delta watershed.

31 (b) Providing a more reliable water supply for the state involves
32 implementation of water use efficiency and conservation projects,
33 wastewater reclamation projects, desalination, and new and
34 improved infrastructure, including water storage and Delta
35 conveyance facilities.

CHAPTER 2. DELTA POLICY

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 3 85020. *The policy of the State of California is to achieve the*
 4 *following objectives that the Legislature declares are inherent in*
 5 *the coequal goals for management of the Delta:*
 6 (a) *Manage the Delta’s water and environmental resources and*
 7 *the water resources of the state over the long term.*
 8 (b) *Protect and enhance the unique cultural, recreational, and*
 9 *agricultural values of the California Delta as an evolving place.*
 10 (c) *Restore the Delta ecosystem, including its fisheries and*
 11 *wildlife, as the heart of a healthy estuary and wetland ecosystem.*
 12 (d) *Promote statewide water conservation, water use efficiency,*
 13 *and sustainable water use.*
 14 (e) *Improve water quality to protect human health and the*
 15 *environment consistent with achieving water quality objectives in*
 16 *the Delta.*
 17 (f) *Improve the water conveyance system and expand statewide*
 18 *water storage.*
 19 (g) *Reduce risks to people, property, and state interests in the*
 20 *Delta by effective emergency preparedness, appropriate land uses,*
 21 *and investments in flood protection.*
 22 (h) *Establish a new governance structure with the authority,*
 23 *responsibility, accountability, scientific support, and adequate*
 24 *and secure funding to achieve these objectives.*
 25 85021. *The policy of the State of California is to reduce*
 26 *reliance on the Delta in meeting California’s future water supply*
 27 *needs through a statewide strategy of investing in improved*
 28 *regional supplies, conservation, and water use efficiency. Each*
 29 *region that depends on water from the Delta watershed shall*
 30 *improve its regional self-reliance for water through investment in*
 31 *water use efficiency, water recycling, advanced water technologies,*
 32 *local and regional water supply projects, and improved regional*
 33 *coordination of local and regional water supply efforts.*
 34 85022. (a) *It is the intent of the Legislature that state and local*
 35 *land use actions identified as “covered actions” pursuant to*
 36 *Section 85058.5 be consistent with the Delta Plan. This section’s*
 37 *findings, policies, and goals apply to Delta land use planning and*
 38 *development.*
 39 (b) *The actions of the council shall be guided by the findings,*
 40 *policies, and goals expressed in this section when reviewing*

1 *decisions of the commission pursuant to Division 19.5*
2 *(commencing with Section 29700) of the Public Resources Code.*

3 *(c) The Legislature finds and declares all of the following:*

4 *(1) The Delta is a distinct and valuable natural resource of vital*
5 *and enduring interest to all the people and exists as a delicately*
6 *balanced estuary and wetland ecosystem of hemispheric*
7 *importance.*

8 *(2) The permanent protection of the Delta's natural and scenic*
9 *resources is the paramount concern to present and future residents*
10 *of the state and nation.*

11 *(3) To promote the public safety, health, and welfare, and to*
12 *protect public and private property, wildlife, fisheries, and the*
13 *natural environment, it is necessary to protect and enhance the*
14 *ecosystem of the Delta and prevent its further deterioration and*
15 *destruction.*

16 *(4) Existing developed uses, and future developments that are*
17 *carefully planned and developed consistent with the policies of*
18 *this division, are essential to the economic and social well-being*
19 *of the people of this state and especially to persons living and*
20 *working in the Delta.*

21 *(d) The fundamental goals for managing land use in the Delta*
22 *are to do all of the following:*

23 *(1) Protect, maintain, enhance, and, where feasible, restore the*
24 *overall quality of the Delta environment and its natural and*
25 *artificial resources.*

26 *(2) Ensure the utilization and conservation of Delta resources,*
27 *taking into account the social and economic needs of the people*
28 *of the state.*

29 *(3) Maximize public access to Delta resources and maximize*
30 *public recreational opportunities in the Delta consistent with sound*
31 *resource conservation principles and constitutionally protected*
32 *rights of private property owners.*

33 *(4) Encourage state and local initiatives and cooperation in*
34 *preparing procedures to implement coordinated planning and*
35 *development for mutually beneficial uses, including educational*
36 *uses, in the Delta.*

37 *(5) Develop new or improved aquatic and terrestrial habitat*
38 *and protect existing habitats to advance the goal of restoring and*
39 *enhancing the Delta ecosystem.*

1 (6) *Improve water quality to protect human health and the*
 2 *environment consistent with achieving water quality objectives in*
 3 *the Delta.*

4 85023. *The longstanding constitutional principle of reasonable*
 5 *use and the public trust doctrine shall be the foundation of state*
 6 *water management policy and are particularly important and*
 7 *applicable to the Delta.*

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CHAPTER 3. MISCELLANEOUS PROVISIONS

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11 85031. (a) *This division does not diminish, impair, or*
 12 *otherwise affect in any manner whatsoever any area of origin,*
 13 *watershed of origin, county of origin, or any other water rights*
 14 *protections, including, but not limited to, rights to water*
 15 *appropriated prior to December 19, 1914, provided under the law.*
 16 *This division does not limit or otherwise affect the application of*
 17 *Article 1.7 (commencing with Section 1215) of Chapter 1 of Part*
 18 *2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461,*
 19 *11462, and 11463, and Sections 12200 to 12220, inclusive.*

20 (b) *Nothing in this division supersedes, limits, or otherwise*
 21 *modifies the applicability of Chapter 10 (commencing with Section*
 22 *1700) of Part 2 of Division 2, including petitions related to any*
 23 *new conveyance constructed or operated in accordance with*
 24 *Chapter 2 (commencing with Section 85320) of Part 4.*

25 (c) *Unless otherwise expressly provided, nothing in this division*
 26 *supersedes, reduces, or otherwise affects existing legal protections,*
 27 *both procedural and substantive, relating to the board's regulation*
 28 *of diversion and use of water, including, but not limited to, the*
 29 *protection provided to municipal interests by Sections 106 and*
 30 *106.5, and changes in water rights. Nothing in this division*
 31 *expands or otherwise alters the board's existing authority to*
 32 *regulate the diversion and use of water or the courts' existing*
 33 *concurrent jurisdiction over California water rights.*

34 85032. *This division does not affect any of the following:*

35 (a) *The Natural Community Conservation Planning Act (Chapter*
 36 *10 (commencing with Section 2800) of Division 3 of the Fish and*
 37 *Game Code).*

38 (b) *The California Endangered Species Act (Chapter 1.5*
 39 *(commencing with Section 2050) of Division 3 of the Fish and*
 40 *Game Code).*

- 1 (c) *The Fish and Game Code.*
- 2 (d) *The Porter-Cologne Water Quality Control Act (Division 7*
- 3 *commencing with Section 13000).*
- 4 (e) *Chapter 8 (commencing with Section 12930) of Part 6 of*
- 5 *Division 6.*
- 6 (f) *The California Environmental Quality Act (Division 13*
- 7 *commencing with Section 21000) of the Public Resources Code).*
- 8 (g) *The application of the public trust doctrine.*
- 9 (h) *Any water right.*
- 10 (i) *The liability of the state for flood protection in the Delta or*
- 11 *its watershed.*
- 12 85034. (a) (1) *The council shall administer all contracts,*
- 13 *grants, easements, and agreements made or entered into by the*
- 14 *California Bay-Delta Authority under Division 26.4 (commencing*
- 15 *with Section 79400), as that division read on December 31, 2009.*
- 16 (2) *The exercise of the authority described in paragraph (1) is*
- 17 *not subject to review or approval by the Department of General*
- 18 *Services.*
- 19 (3) *A contract, lease, license, or any other agreement to which*
- 20 *the California Bay-Delta Authority is a party is not void or*
- 21 *voidable as a result of the implementation of this subdivision, but*
- 22 *shall continue in full force and effect until the end of its term.*
- 23 (b) *The council shall be the successor to and shall assume from*
- 24 *the California Bay-Delta Authority all of the administrative rights,*
- 25 *abilities, obligations, and duties of that authority.*
- 26 (c) *The council shall have possession and control of all records,*
- 27 *papers, equipment, supplies, contracts, leases, agreements, and*
- 28 *other property, real or personal, connected with the administration*
- 29 *of Division 26.4 (commencing with Section 79400), as that division*
- 30 *read on December 31, 2009, or held for the benefit or use of the*
- 31 *California Bay-Delta Authority.*
- 32 (d) *The council shall assume from the California Bay-Delta*
- 33 *Authority all responsibility to manage, in accordance with Chapter*
- 34 *5 (commencing with Section 85280) of Part 3, the science program*
- 35 *element that was required to be undertaken by Division 26.4*
- 36 *(commencing with Section 79400).*
- 37 (e) *Consistent with the responsibilities and duties assumed by*
- 38 *the council pursuant to this section, all staff, resources, and funding*
- 39 *within the Natural Resources Agency and the Department of*
- 40 *Forestry and Fire Protection for the support of the CALFED*

1 Bay-Delta Program are hereby transferred to, and may be
 2 expended for the purposes of, the council. The executive officer of
 3 the council shall confer with the Director of Fish and Game, the
 4 director of the department, and the executive director of the board
 5 regarding possible reallocation of the staff and resources. The
 6 status, position, and rights of any officer or employee shall not be
 7 affected by this transfer and all officers and employees shall be
 8 retained pursuant to the State Civil Service Act (Part 2
 9 (commencing with Section 18500) of Division 5 of Title 2 of the
 10 Government Code).

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CHAPTER 4. DEFINITIONS

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14 85050. Unless the context otherwise requires, the definitions
 15 set forth in this chapter govern the construction of this division.

16 85051. “Acquisition” means the acquisition of a fee interest
 17 or any other interest, including easements, leases, and development
 18 rights.

19 85052. “Adaptive management” means a framework and
 20 flexible decisionmaking process for ongoing knowledge acquisition,
 21 monitoring, and evaluation leading to continuous improvement in
 22 management planning and implementation of a project to achieve
 23 specified objectives.

24 85053. “Bay Delta Conservation Plan” or “BDCP” means a
 25 multispecies conservation plan.

26 85054. “Coequal goals” means the two goals of providing a
 27 more reliable water supply for California and protecting, restoring,
 28 and enhancing the Delta ecosystem. The coequal goals shall be
 29 achieved in a manner that protects and enhances the unique
 30 cultural, recreational, natural resource, and agricultural values
 31 of the Delta as an evolving place.

32 85055. “Commission” means the Delta Protection Commission
 33 established in Division 19.5 (commencing with Section 29700) of
 34 the Public Resources Code.

35 85056. “Conservancy” means the Sacramento-San Joaquin
 36 Delta Conservancy established in Section 32320 of the Public
 37 Resources Code.

38 85057. “Council” means the Delta Stewardship Council
 39 established in Section 85200.

1 85057.5. (a) “Covered action” means a plan, program,
2 project, or activity that meets all of the following conditions:
3 (1) Will occur, in whole or in part, within the boundaries of the
4 Delta or Suisun Marsh.
5 (2) Will be carried out, approved, or funded by the state or a
6 local public agency.
7 (3) Is covered by one or more provisions of the Delta Plan.
8 (4) Will have a significant impact on achievement of one or both
9 of the coequal goals or the implementation of
10 government-sponsored flood control programs to reduce risks to
11 people, property, and state interests in the Delta.
12 (b) “Covered action” does not include any of the following:
13 (1) A regulatory action of a state agency.
14 (2) Routine maintenance and operation of the State Water
15 Project or the federal Central Valley Project.
16 (3) Regional transportation plans prepared pursuant to Section
17 65080 of the Government Code.
18 (4) Any plan, program, project, or activity within the secondary
19 zone of the Delta that the applicable metropolitan planning
20 organization under Section 65080 of the Government Code has
21 determined is consistent with either a sustainable communities
22 strategy or an alternative planning strategy that the State Air
23 Resources Board has determined would, if implemented, achieve
24 the greenhouse gas emission reduction targets established by that
25 board pursuant to subparagraph (A) of paragraph (2) of
26 subdivision (b) of Section 65080 of the Government Code. For
27 purposes of this paragraph, “consistent with” means consistent
28 with the use designation, density, building intensity, transportation
29 plan, and applicable policies specified for the area in the
30 sustainable communities strategy or the alternative planning
31 strategy, as applicable, and any infrastructure necessary to support
32 the plan, program, project, or activity.
33 (5) Routine maintenance and operation of any facility located,
34 in whole or in part, in the Delta, that is owned or operated by a
35 local public agency.
36 (6) Any plan, program, project, or activity that occurs, in whole
37 or in part, in the Delta, if both of the following conditions are met:
38 (A) The plan, program, project, or activity is undertaken by a
39 local public agency that is located, in whole or in part, in the Delta.

1 (B) *Either a notice of determination is filed, pursuant to Section*
 2 *21152 of the Public Resources Code, for the plan, program,*
 3 *project, or activity by, or the plan, program, project, or activity is*
 4 *fully permitted by, September 30, 2009.*

5 85058. *“Delta” means the Sacramento-San Joaquin Delta as*
 6 *defined in Section 12220 and the Suisun Marsh, as defined in*
 7 *Section 29101 of the Public Resources Code.*

8 85059. *“Delta Plan” means the comprehensive, long-term*
 9 *management plan for the Delta as adopted by the council in*
 10 *accordance with this division.*

11 85060. *“Delta watershed” means the Sacramento River*
 12 *Hydrologic Region and the San Joaquin River Hydrologic Region*
 13 *as described in the department’s Bulletin No. 160-05.*

14 85064. *“Public water agency” means a public entity, as defined*
 15 *in Section 514, that provides water service, as defined in Section*
 16 *515.*

17 85066. *“Restoration” means the application of ecological*
 18 *principles to restore a degraded or fragmented ecosystem and*
 19 *return it to a condition in which its biological and structural*
 20 *components achieve a close approximation of its natural potential,*
 21 *taking into consideration the physical changes that have occurred*
 22 *in the past and the future impact of climate change and sea level*
 23 *rise.*

24 85067. *“Strategic Plan” means both the “Delta Vision*
 25 *Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force*
 26 *on October 17, 2008, and the “Delta Vision Implementation*
 27 *Report” adopted by the Delta Vision Committee and dated*
 28 *December 31, 2008.*

29
 30 **PART 2. EARLY ACTIONS**

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 32 85080. *The council shall appoint a Delta Independent Science*
 33 *Board in accordance with Section 85280.*

34 85082. *The council shall develop and implement a strategy to*
 35 *appropriately engage participation of the federal agencies with*
 36 *responsibilities in the Delta. This strategy shall include engaging*
 37 *these federal agencies to develop the Delta Plan consistent with*
 38 *the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec.*
 39 *1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251*
 40 *et seq.), and Section 8 of the federal Reclamation Act of 1902.*

1 85084. *The council shall develop an interim plan that includes*
2 *recommendations for early actions, projects, and programs.*

3 85084.5. *The Department of Fish and Game, in consultation*
4 *with the United States Fish and Wildlife Service and the National*
5 *Marine Fisheries Service and based on the best available science,*
6 *shall develop and recommend to the board Delta flow criteria and*
7 *quantifiable biological objectives for aquatic and terrestrial species*
8 *of concern dependent on the Delta. The recommendations shall*
9 *be developed no later than 12 months after the date of enactment*
10 *of this division.*

11 85085. *The department shall do all of the following:*

12 (a) *Coordinate with the Department of Fish and Game, the*
13 *board, the California regional water quality control boards, and*
14 *the State Lands Commission efforts to cooperate with the United*
15 *States Bureau of Reclamation to construct and implement the*
16 *Two-Gates Fish Protection Demonstration Project by December*
17 *1, 2010.*

18 (b) *Evaluate the effectiveness of the Three Mile Slough Barrier*
19 *project.*

20 (c) *Expediently move ahead with other near term actions as*
21 *identified in the Strategic Plan.*

22 (d) *Assist in implementing early action ecosystem restoration*
23 *projects, including, but not limited to, Dutch Slough tidal marsh*
24 *restoration and Meins Island tidal marsh restoration.*

25 85086. (a) *The board shall establish an effective system of*
26 *Delta watershed diversion data collection and public reporting*
27 *by December 31, 2010.*

28 (b) *It is the intent of the Legislature to establish an accelerated*
29 *process to determine instream flow needs of the Delta for the*
30 *purposes of facilitating the planning decisions that are required*
31 *to achieve the objectives of the Delta Plan.*

32 (c) (1) *For the purpose of informing planning decisions for the*
33 *Delta Plan and the Bay Delta Conservation Plan, the board shall,*
34 *pursuant to its public trust obligations, develop new flow criteria*
35 *for the Delta ecosystem necessary to protect public trust resources.*
36 *In carrying out this section, the board shall review existing water*
37 *quality objectives and use the best available scientific information.*
38 *The flow criteria for the Delta ecosystem shall include the volume,*
39 *quality, and timing of water necessary for the Delta ecosystem*
40 *under different conditions. The flow criteria shall be developed in*

1 a public process by the board within nine months of the enactment
2 of this division. The public process shall be in the form of an
3 informational proceeding conducted pursuant to Article 3
4 (commencing with Section 649) of Chapter 1.5 of Division 3 of
5 Title 23 of the California Code of Regulations, including an
6 opportunity for all interested persons to participate. The flow
7 criteria shall not be considered predecisional with regard to any
8 subsequent board consideration of a permit, including any permit
9 in connection with a final BDCP.

10 (2) Any order approving a change in the point of diversion of
11 the State Water Project or the federal Central Valley Project from
12 the southern Delta to a point on the Sacramento River shall include
13 appropriate Delta flow criteria and shall be informed by the
14 analysis conducted pursuant to this section. The flow criteria shall
15 be subject to modification over time based on a science-based
16 adaptive management program that integrates scientific and
17 monitoring results, including the contribution of habitat and other
18 conservation measures, into ongoing Delta water management.

19 (3) Nothing in this section amends or otherwise affects the
20 application of the board's authority under Part 2 (commencing
21 with Section 1200) of Division 2 to include terms and conditions
22 in permits that in its judgment will best develop, conserve, and
23 utilize in the public interest the water sought to be appropriated.

24 (d) The board shall enter into an agreement with the State Water
25 Project contractors and the federal Central Valley Project
26 contractors, who rely on water exported from the Sacramento
27 River watershed, or a joint powers authority comprised of those
28 contractors, for reimbursement of the costs of the analysis
29 conducted pursuant to this section.

30 (e) The board shall submit its flow criteria determinations
31 pursuant to this section to the council for its information within
32 30 days of completing the determinations.

33 85087. The board, by December 31, 2010, shall submit to the
34 Legislature a prioritized schedule and estimate of costs to complete
35 instream flow studies for the Delta and for high priority rivers and
36 streams in the Delta watershed, not otherwise covered by Section
37 85086, by 2012, and for all major rivers and streams outside the
38 Sacramento River watershed by 2018. In developing this schedule,
39 the board shall consult with the Department of Fish and Game as

1 *to the timing of its submission of recommendations for instream*
2 *flow needs.*

3 85088. *Until the board issues an order approving a change in*
4 *the point of diversion of the State Water Project and the federal*
5 *Central Valley Project from the southern Delta to a point on the*
6 *Sacramento River as specified in subdivision (c) of Section 85086,*
7 *the department shall not commence construction of any diversion,*
8 *conveyance, or other facility necessary to divert and convey water*
9 *pursuant to the change in point of diversion.*

10 85089. *Construction of a new Delta conveyance facility shall*
11 *not be initiated until the persons or entities that contract to receive*
12 *water from the State Water Project and the federal Central Valley*
13 *Project or a joint powers authority representing those entities have*
14 *made arrangements or entered into contracts to pay for both of*
15 *the following:*

16 (a) *The costs of the environmental review, planning, design,*
17 *construction, mitigation, including mitigation required pursuant*
18 *to Division 13 (commencing with Section 21000 of the Public*
19 *Resources Code) required but for the construction, operation, and*
20 *maintenance of any new Delta water conveyance facility.*

21 (b) *Full mitigation of property tax or assessments levied by*
22 *local governments or special districts for land used in the*
23 *construction, location, mitigation, or operation of new Delta*
24 *conveyance facilities.*

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26 *PART 3. DELTA GOVERNANCE*

27

28 *CHAPTER 1. DELTA STEWARDSHIP COUNCIL*

29

30 85200. (a) *The Delta Stewardship Council is hereby*
31 *established as an independent agency of the state.*

32 (b) (1) *The council shall consist of seven voting members, of*
33 *which four members shall be appointed by the Governor and*
34 *confirmed by the Senate, one member shall be appointed by the*
35 *Senate Committee on Rules, one member shall be appointed by*
36 *the Speaker of the Assembly, and one member shall be the*
37 *Chairperson of the Delta Protection Commission. Initial*
38 *appointments to the council shall be made by July 1, 2010.*

39 (2) *No member of the council shall serve two consecutive terms,*
40 *but a member may be reappointed after a period of two years*

1 following the end of his or her term, except that those members of
2 the council that serve an initial term of one or two years may be
3 immediately appointed to a subsequent full four-year term.

4 (c) (1) (A) The initial terms of two of the four members
5 appointed by the Governor shall be four years:

6 (B) The initial terms of two of the four members appointed by
7 the Governor shall be six years.

8 (C) The initial terms of the members appointed by the Senate
9 Committee on Rules and the Speaker of the Assembly shall be four
10 years.

11 (D) Upon the expiration of each term described in
12 subparagraphs (A), (B), or (C), the term of each succeeding
13 member shall be four years.

14 (2) The Chairperson of the Delta Protection Commission shall
15 serve as a member of the council for the period during which he
16 or she holds the position as commission chairperson.

17 (d) Any vacancy shall be filled by the appointing authority within
18 60 days. If the term of a council member expires, and no successor
19 is appointed within the allotted timeframe, the existing member
20 may serve up to 180 days beyond the expiration of his or her term.

21 (e) The council members shall select a chairperson from among
22 their members, who shall serve for not more than four years in
23 that capacity.

24 (f) The council shall meet once a month in a public forum. At
25 least two meetings each year shall take place at a location within
26 the Delta.

27 85201. (a) The chairperson shall serve full time. Other
28 members shall serve one-third time. The council may select a vice
29 chairperson and other officers determined to be necessary.

30 (b) Each member of the council shall receive the salary provided
31 for in Section 11564 of the Government Code.

32 (c) The members of the council shall be reimbursed for expenses
33 necessarily incurred in the performance of official duties.

34 (d) The council shall appoint an executive officer who shall
35 serve full time at the pleasure of the council.

36 (e) The executive officer shall hire employees necessary to carry
37 out council functions.

38 (f) The number of employees and qualifications of those
39 employees shall be determined by the council, subject to the
40 availability of funds.

1 (g) *The salary of each employee of the council shall be*
2 *determined by the State Personnel Board, and shall reflect the*
3 *duties and responsibilities of the position.*

4 (h) *All persons employed by the council are state employees,*
5 *subject to the duties, responsibilities, limitations, and benefits of*
6 *the state.*

7 85202. *Council members shall possess diverse expertise and*
8 *reflect a statewide perspective.*

9 85203. *The headquarters of the council shall be located in*
10 *Sacramento.*

11 85204. *The council shall establish and oversee a committee of*
12 *agencies responsible for implementing the Delta Plan. Each agency*
13 *shall coordinate its actions pursuant to the Delta Plan with the*
14 *council and the other relevant agencies.*

15
16 *CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE*
17 *COUNCIL*
18

19 85210. *The council has all of the following powers:*

20 (a) *To sue or be sued.*

21 (b) *To enter into contracts.*

22 (c) *To employ the services of public, nonprofit, and private*
23 *entities.*

24 (d) *To delegate administrative functions to council staff.*

25 (e) *To employ its own legal staff or contract with other state or*
26 *federal agencies for legal services, or both. The council may*
27 *employ special legal counsel with the approval of the Attorney*
28 *General.*

29 (f) *To receive funds, including funds from private and local*
30 *governmental sources, contributions from public and private*
31 *sources, as well as state and federal appropriations.*

32 (g) *To disburse funds through grants, public assistance, loans,*
33 *and contracts.*

34 (h) *To request reports from state, federal, and local*
35 *governmental agencies on issues related to the implementation of*
36 *the Delta Plan.*

37 (i) *To adopt regulations or guidelines as needed to carry out*
38 *the powers and duties identified in this division.*

1 (j) To comment on state agency environmental impact reports
2 for projects outside the Delta that the council determines will have
3 a significant impact on the Delta.

4 (k) To hold hearings in all parts of the state necessary to carry
5 out the powers vested in it, and for those purposes has the powers
6 conferred upon the heads of state departments pursuant to Article
7 2 (commencing with Section 11180) of Chapter 2 of Part 1 of
8 Division 3 of Title 2 of the Government Code. Any hearing by the
9 council may be conducted by any member of the council, or other
10 designee, upon authorization of the council, and he or she shall
11 have the powers granted to the council by this section, provided
12 that any final action of the council shall be taken by a majority of
13 the membership of the council at a meeting duly called and held.

14 85210.5. A majority of the voting members of the council shall
15 constitute a quorum for the transaction of the business of the
16 council. A majority vote of the voting membership shall be required
17 to take action with respect to any matter unless otherwise specified
18 in this division. The vote of each member shall be individually
19 recorded.

20 85211. The Delta Plan shall include performance
21 measurements that will enable the council to track progress in
22 meeting the objectives of the Delta Plan. The performance
23 measurements shall include, but need not be limited to, quantitative
24 or otherwise measurable assessments of the status and trends in
25 all of the following:

26 (a) The health of the Delta's estuary and wetland ecosystem for
27 supporting viable populations of aquatic and terrestrial species,
28 habitats, and processes, including viable populations of Delta
29 fisheries and other aquatic organisms.

30 (b) The reliability of California water supply imported from the
31 Sacramento River or the San Joaquin River watershed.

32 85212. The council shall review and provide timely advice to
33 local and regional planning agencies regarding the consistency
34 of local and regional planning documents, including sustainable
35 communities strategies and alternative planning strategies
36 prepared pursuant to Section 65080 of the Government Code, with
37 the Delta Plan. The council's input shall include, but not be limited
38 to, reviewing the consistency of local and regional planning
39 documents with the ecosystem restoration needs of the Delta and
40 reviewing whether the lands set aside for natural resource

1 protection are sufficient to meet the Delta’s ecosystem needs. A
2 metropolitan planning organization preparing a regional
3 transportation plan under Section 65080 of the Government Code
4 that includes land within the primary or secondary zones of the
5 Delta shall consult with the council early in the planning process
6 regarding the issues and policy choices relating to the council’s
7 advice. No later than 60 days prior to the adoption of a final
8 regional transportation plan, the metropolitan planning
9 organization shall provide the council with a draft sustainable
10 communities strategy and an alternative planning strategy, if any.
11 Concurrently, the metropolitan planning organization shall provide
12 notice of its submission to the council in the same manner in which
13 agencies file a certificate of consistency pursuant to Section 85225.
14 If the council concludes that the draft sustainable communities
15 strategy or alternative planning strategy is inconsistent with the
16 Delta Plan, the council shall provide written notice of the claimed
17 inconsistency to the metropolitan planning organization no later
18 than 30 days prior to the adoption of the final regional
19 transportation plan. If the council provides timely notice of a
20 claimed inconsistency, the metropolitan planning organization’s
21 adoption of the final regional transportation plan shall include a
22 detailed response to the council’s notice.

23
24 *CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC*
25 *AGENCY ACTIONS*
26

27 85225. A state or local public agency that proposes to
28 undertake a covered action, prior to initiating the implementation
29 of that covered action, shall prepare a written certification of
30 consistency with detailed findings as to whether the covered action
31 is consistent with the Delta Plan and shall submit that certification
32 to the council.

33 85225.5. To assist state and local public agencies in preparing
34 the required certification, the council shall develop procedures
35 for early consultation with the council on the proposed covered
36 action.

37 85225.10. (a) Any person who claims that a proposed covered
38 action is inconsistent with the Delta Plan and, as a result of that
39 inconsistency, the action will have a significant adverse impact
40 on the achievement of one or both of the coequal goals or

1 implementation of government-sponsored flood control programs
2 to reduce risks to people and property in the Delta, may file an
3 appeal with regard to a certification of consistency submitted to
4 the council.

5 (b) The appeal shall clearly and specifically set forth the basis
6 for the claim, including specific factual allegations, that the
7 covered action is inconsistent with the Delta Plan. The council
8 may request from the appellant additional information necessary
9 to clarify, amplify, correct, or otherwise supplement the
10 information submitted with the appeal, within a reasonable period.

11 (c) The council, or by delegation the executive officer, may
12 dismiss the appeal for failure of the appellant to provide
13 information requested by the council within the period provided,
14 if the information requested is in the possession or under the
15 control of the appellant.

16 85225.15. The appeal shall be filed no later than 30 days after
17 the submission of the certification of consistency. If no person
18 appeals the certification of consistency, the state or local public
19 agency may proceed to implement the covered action.

20 85225.20. The appeal shall be heard by the council within 60
21 days of the date of the filing of the appeal, unless the council, or
22 by delegation the executive officer, determines that the issue raised
23 on appeal is not within the council's jurisdiction or does not raise
24 an appealable issue. The council shall make its decision on the
25 appeal within 60 days of hearing the appeal.

26 85225.25. After a hearing on an appealed action, the council
27 shall make specific written findings either denying the appeal or
28 remanding the matter to the state or local public agency for
29 reconsideration of the covered action based on the finding that
30 the certification of consistency is not supported by substantial
31 evidence in the record before the state or local public agency that
32 filed the certification. Upon remand, the state or local agency may
33 determine whether to proceed with the covered action. If the agency
34 decides to proceed with the action or with the action as modified
35 to respond to the findings of the council, the agency shall, prior
36 to proceeding with the action, file a revised certification of
37 consistency that addresses each of the findings made by the council
38 and file that revised certification with the council.

39 85225.30. The council shall adopt administrative procedures
40 governing appeals, which shall be exempt from Chapter 3.5

1 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 2 of the Government Code.

3

4

CHAPTER 4. DELTA WATERMASTER

5

6 85230. (a) The board, in consultation with the council, shall
7 appoint, for a term of four years, a special master for the Delta,
8 whose title shall be “the Delta Watermaster.”

9 (b) The board shall adopt internal procedures delegating
10 authority to the Delta Watermaster. The Delta Watermaster shall
11 exercise the board’s authority to provide timely monitoring and
12 enforcement of board orders and license and permit terms and
13 conditions. The Delta Watermaster’s delegated authority shall
14 include authority to require monitoring and reporting, authority
15 for approvals delegated to an officer or employee of the board by
16 the terms of a water right permit or license, authority to approve
17 temporary urgency changes pursuant to Chapter 6.6 (commencing
18 with Section 1435) of Part 2 of Division 2, and authority to issue
19 a notice of proposed cease and desist order or administrative civil
20 liability complaint. The Delta Watermaster’s authority shall be
21 limited to diversions in the Delta, and for the monitoring and
22 enforcement of the board’s orders and license and permit terms
23 and conditions that apply to conditions in the Delta.

24 (c) The internal procedures adopted by the board shall provide
25 for due process in adjudicative proceedings, and may establish
26 procedures for the issuance of a stay of any order or decision of
27 the Delta Watermaster for which a petition for reconsideration is
28 filed or reconsideration is ordered under Section 1122. The board
29 may provide any additional duties or needs of the Delta
30 Watermaster that the board deems necessary for effective
31 day-to-day enforcement of its decisions.

32 (d) The Delta Watermaster shall submit regular reports to the
33 board and the council including, but not limited to, reports on
34 water rights administration, water quality issues, and conveyance
35 operations.

1 CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA
2 SCIENCE PROGRAM

3
4 85280. (a) *The Delta Independent Science Board is hereby
5 established in state government.*

6 (1) *The Delta Independent Science Board shall consist of no
7 more than 10 members appointed by the council. The term of office
8 for members of the Delta Independent Science Board shall be five
9 years. A member may serve no more than two terms.*

10 (2) *Members of the Delta Independent Science Board shall be
11 nationally or internationally prominent scientists with appropriate
12 expertise to evaluate the broad range of scientific programs that
13 support adaptive management of the Delta. The members shall
14 not be directly affiliated with a program or agency subject to the
15 review activities of the Delta Independent Science Board.*

16 (3) *The Delta Independent Science Board shall provide oversight
17 of the scientific research, monitoring, and assessment programs
18 that support adaptive management of the Delta through periodic
19 reviews of each of those programs that shall be scheduled to ensure
20 that all Delta scientific research, monitoring, and assessment
21 programs are reviewed at least once every four years.*

22 (4) *The Delta Independent Science Board shall submit to the
23 council a report on the results of each review, including
24 recommendations for any changes in the programs reviewed by
25 the board.*

26 (b) *After consultation with the Delta Independent Science Board,
27 the council shall appoint a lead scientist for the Delta Science
28 Program.*

29 (1) *The lead scientist shall meet all of the following
30 qualifications:*

31 (A) *Hold an advanced degree in a field related to water or
32 ecosystem management.*

33 (B) *Have a strong record of scientific research and publication
34 in peer-reviewed scientific journals in a field related to water or
35 ecosystem management.*

36 (C) *Have experience advising high-level managers in
37 science-based decisionmaking in the areas of water management
38 and ecosystem restoration.*

1 (D) Have the capability to guide the application of an adaptive
2 management process to resource management policy decisions in
3 the Delta.

4 (2) The term of office for the lead scientist shall be no more
5 than three years. The lead scientist may serve no more than two
6 terms.

7 (3) The lead scientist shall oversee the implementation of the
8 Delta Science Program. In carrying out that responsibility, the
9 lead scientist shall regularly consult with the agencies participating
10 in the program.

11 (4) The mission of the Delta Science Program shall be to provide
12 the best possible unbiased scientific information to inform water
13 and environmental decisionmaking in the Delta. That mission shall
14 be carried out through funding research, synthesizing and
15 communicating scientific information to policymakers and
16 decisionmakers, promoting independent scientific peer review,
17 and coordinating with Delta agencies to promote science-based
18 adaptive management. The Delta Science Program shall assist
19 with development and periodic updates of the Delta Plan's adaptive
20 management program.

21 (c) The Delta Science Program shall function as a replacement
22 for, and successor to, the CALFED Science Program and the Delta
23 Independent Science Board shall replace the CALFED Independent
24 Science Board.

25
26 **PART 4. COMPREHENSIVE DELTA PLANNING**

27
28 **CHAPTER 1. THE DELTA PLAN**

29
30 85300. (a) On or before January 1, 2012, the council shall
31 develop, adopt, and commence implementation of the Delta Plan
32 pursuant to this part that furthers the coequal goals. The Delta
33 Plan shall include subgoals and strategies to assist in guiding
34 state and local agency actions related to the Delta. In developing
35 the Delta Plan, the council shall consider each of the strategies
36 and actions set forth in the Strategic Plan and may include any of
37 those strategies or actions in the Delta Plan. The Delta Plan may
38 also identify specific actions that state or local agencies may take
39 to implement the subgoals and strategies.

1 (b) In developing the Delta Plan, the council shall consult with
2 federal, state, and local agencies with responsibilities in the Delta.
3 All state agencies with responsibilities in the Delta shall cooperate
4 with the council in developing the Delta Plan, upon request of the
5 council.

6 (c) The council shall review the Delta Plan at least once every
7 five years and may revise it as the council deems appropriate. The
8 council may request any state agency with responsibilities in the
9 Delta to make recommendations with respect to revision of the
10 Delta Plan.

11 (d) (1) The council shall develop the Delta Plan consistent with
12 all of the following:

13 (A) The federal Coastal Zone Management Act of 1972 (16
14 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

15 (B) Section 8 of the federal Reclamation Act of 1902.

16 (C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

17 (2) If the council adopts a Delta Plan pursuant to the federal
18 Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et
19 seq.), the council shall submit the Delta Plan for approval to the
20 United States Secretary of Commerce pursuant to that act, or to
21 any other federal official assigned responsibility for the Delta
22 pursuant to a federal statute enacted after January 1, 2010.

23 (e) The council shall report to the Legislature no later than
24 March 31, 2012, as to its adoption of the Delta Plan.

25 85301. (a) The commission shall develop, for consideration
26 and incorporation into the Delta Plan by the council, a proposal
27 to protect, enhance, and sustain the unique cultural, historical,
28 recreational, agricultural, and economic values of the Delta as
29 an evolving place, in a manner consistent with the coequal goals.
30 For the purpose of carrying out this subdivision, the commission
31 may include in the proposal the relevant strategies described in
32 the Strategic Plan.

33 (b) (1) The commission shall include in the proposal a plan to
34 establish state and federal designation of the Delta as a place of
35 special significance, which may include application for a federal
36 designation of the Delta as a National Heritage Area.

37 (2) The commission shall include in the proposal a regional
38 economic plan to support increased investment in agriculture,
39 recreation, tourism, and other resilient land uses in the Delta. The
40 regional economic plan shall include detailed recommendations

1 *for the administration of the Delta Investment Fund created by*
2 *Section 29778.5 of the Public Resources Code.*

3 *(c) For the purposes of assisting the commission in its*
4 *preparation of the proposal, both of the following actions shall be*
5 *undertaken:*

6 *(1) The Department of Parks and Recreation shall prepare a*
7 *proposal, for submission to the commission, to expand within the*
8 *Delta the network of state recreation areas, combining existing*
9 *and newly designated areas. The proposal may incorporate*
10 *appropriate aspects of any existing plans, including the Central*
11 *Valley Vision Implementation Plan adopted by the Department of*
12 *Parks and Recreation.*

13 *(2) The Department of Food and Agriculture shall prepare a*
14 *proposal, for submission to the commission, to establish market*
15 *incentives and infrastructure to protect and enhance the economic*
16 *and public values of Delta agriculture.*

17 *(d) The commission shall submit the proposal developed*
18 *pursuant to subdivision (a) to the council. The council shall*
19 *consider the proposal and may include any portion of the proposal*
20 *in the Delta Plan if the council, in its discretion, determines that*
21 *the portion of the proposal is feasible and consistent with the*
22 *objectives of the Delta Plan and the purposes of this division.*

23 *85302. (a) The implementation of the Delta Plan shall further*
24 *the restoration of the Delta ecosystem and a reliable water supply.*

25 *(b) The geographic scope of the ecosystem restoration projects*
26 *and programs identified in the Delta Plan shall be the Delta, except*
27 *that the Delta Plan may include recommended ecosystem projects*
28 *outside the Delta that will contribute to achievement of the coequal*
29 *goals.*

30 *(c) The Delta Plan shall include measures that promote all of*
31 *the following characteristics of a healthy Delta ecosystem:*

32 *(1) Viable populations of native resident and migratory species.*

33 *(2) Functional corridors for migratory species.*

34 *(3) Diverse and biologically appropriate habitats and ecosystem*
35 *processes.*

36 *(4) Reduced threats and stresses on the Delta ecosystem.*

37 *(5) Conditions conducive to meeting or exceeding the goals in*
38 *existing species recovery plans and state and federal goals with*
39 *respect to doubling salmon populations.*

- 1 *(d) The Delta Plan shall include measures to promote a more*
 2 *reliable water supply that address all of the following:*
 3 *(1) Meeting the needs for reasonable and beneficial uses of*
 4 *water.*
 5 *(2) Sustaining the economic vitality of the state.*
 6 *(3) Improving water quality to protect human health and the*
 7 *environment.*
 8 *(e) The following subgoals and strategies for restoring a healthy*
 9 *ecosystem shall be included in the Delta Plan:*
 10 *(1) Restore large areas of interconnected habitats within the*
 11 *Delta and its watershed by 2100.*
 12 *(2) Establish migratory corridors for fish, birds, and other*
 13 *animals along selected Delta river channels.*
 14 *(3) Promote self-sustaining, diverse populations of native and*
 15 *valued species by reducing the risk of take and harm from invasive*
 16 *species.*
 17 *(4) Restore Delta flows and channels to support a healthy*
 18 *estuary and other ecosystems.*
 19 *(5) Improve water quality to meet drinking water, agriculture,*
 20 *and ecosystem long-term goals.*
 21 *(6) Restore habitat necessary to avoid a net loss of migratory*
 22 *bird habitat and, where feasible, increase migratory bird habitat*
 23 *to promote viable populations of migratory birds.*
 24 *(f) The council shall consider, for incorporation into the Delta*
 25 *Plan, actions designed to implement the subgoals and strategies*
 26 *described in subdivision (e).*
 27 *(g) In carrying out this section, the council shall make use of*
 28 *the best available science.*
 29 *(h) The Delta Plan shall include recommendations regarding*
 30 *state agency management of lands in the Delta.*
 31 85303. *The Delta Plan shall promote statewide water*
 32 *conservation, water use efficiency, and sustainable use of water.*
 33 85304. *The Delta Plan shall promote options for new and*
 34 *improved infrastructure relating to the water conveyance in the*
 35 *Delta, storage systems, and for the operation of both to achieve*
 36 *the coequal goals.*
 37 85305. *(a) The Delta Plan shall attempt to reduce risks to*
 38 *people, property, and state interests in the Delta by promoting*
 39 *effective emergency preparedness, appropriate land uses, and*
 40 *strategic levee investments.*

1 (b) The council may incorporate into the Delta Plan the
2 emergency preparedness and response strategies for the Delta
3 developed by the California Emergency Management Agency
4 pursuant to Section 12994.5.

5 85306. The council, in consultation with the Central Valley
6 Flood Protection Board, shall recommend in the Delta Plan
7 priorities for state investments in levee operation, maintenance,
8 and improvements in the Delta, including both levees that are a
9 part of the State Plan of Flood Control and nonproject levees.

10 85307. (a) The Delta Plan may identify actions to be taken
11 outside of the Delta, if those actions are determined to significantly
12 reduce flood risks in the Delta.

13 (b) The Delta Plan may include local plans of flood protection.

14 (c) The council, in consultation with the Department of
15 Transportation, may address in the Delta Plan the effects of climate
16 change and sea level rise on the three state highways that cross
17 the Delta.

18 (d) The council, in consultation with the State Energy Resources
19 Conservation and Development Commission and the Public
20 Utilities Commission, may incorporate into the Delta Plan
21 additional actions to address the needs of Delta energy
22 development, energy storage, and energy distribution.

23 85308. The Delta Plan shall meet all of the following
24 requirements:

25 (a) Be based on the best available scientific information and
26 the independent science advice provided by the Delta Independent
27 Science Board.

28 (b) Include quantified or otherwise measurable targets
29 associated with achieving the objectives of the Delta Plan.

30 (c) Where appropriate, utilize monitoring, data collection, and
31 analysis of actions sufficient to determine progress toward meeting
32 the quantified targets.

33 (d) Describe the methods by which the council shall measure
34 progress toward achieving the coequal goals.

35 (e) Where appropriate, recommend integration of scientific and
36 monitoring results into ongoing Delta water management.

37 (f) Include a science-based, transparent, and formal adaptive
38 management strategy for ongoing ecosystem restoration and water
39 management decisions.

1 85309. *The department, in consultation with the United States*
2 *Army Corps of Engineers and the Central Valley Flood Protection*
3 *Board, shall prepare a proposal to coordinate flood and water*
4 *supply operations of the State Water Project and the federal*
5 *Central Valley Project, and submit the proposal to the council for*
6 *consideration for incorporation into the Delta Plan. In drafting*
7 *the proposal, the department shall consider all related actions set*
8 *forth in the Strategic Plan.*

9

10 *CHAPTER 2. BAY DELTA CONSERVATION PLAN*

11

12 85320. (a) *The Bay Delta Conservation Plan (BDCP) shall*
13 *be considered for inclusion in the Delta Plan in accordance with*
14 *this chapter.*

15 (b) *The BDCP shall not be incorporated into the Delta Plan*
16 *and the public benefits associated with the BDCP shall not be*
17 *eligible for state funding, unless the BDCP does all of the*
18 *following:*

19 (1) *Complies with Chapter 10 (commencing with Section 2800)*
20 *of Division 3 of the Fish and Game Code.*

21 (2) *Complies with Division 13 (commencing with Section 21000)*
22 *of the Public Resources Code, including a comprehensive review*
23 *and analysis of all of the following:*

24 (A) *A reasonable range of flow criteria, rates of diversion, and*
25 *other operational criteria required to satisfy the criteria for*
26 *approval of a natural community conservation plan as provided*
27 *in subdivision (a) of Section 2820 of the Fish and Game Code, and*
28 *other operational requirements and flows necessary for recovering*
29 *the Delta ecosystem and restoring fisheries under a reasonable*
30 *range of hydrologic conditions, which will identify the remaining*
31 *water available for export and other beneficial uses.*

32 (B) *A reasonable range of Delta conveyance alternatives,*
33 *including through-Delta, dual conveyance, and isolated conveyance*
34 *alternatives and including further capacity and design options of*
35 *a lined canal, an unlined canal, and pipelines.*

36 (C) *The potential effects of climate change, possible sea level*
37 *rise up to 55 inches, and possible changes in total precipitation*
38 *and runoff patterns on the conveyance alternatives and habitat*
39 *restoration activities considered in the environmental impact*
40 *report.*

1 (D) *The potential effects on migratory fish and aquatic*
2 *resources.*

3 (E) *The potential effects on Sacramento River and San Joaquin*
4 *River flood management.*

5 (F) *The resilience and recovery of Delta conveyance alternatives*
6 *in the event of catastrophic loss caused by earthquake or flood or*
7 *other natural disaster.*

8 (G) *The potential effects of each Delta conveyance alternative*
9 *on Delta water quality.*

10 (c) *The department shall consult with the council and the Delta*
11 *Independent Science Board during the development of the BDCP.*
12 *The council shall be a responsible agency in the development of*
13 *the environmental impact report. The Delta Independent Science*
14 *Board shall review the draft environmental impact report and*
15 *submit its comments to the council and the Department of Fish*
16 *and Game.*

17 (d) *If the Department of Fish and Game approves the BDCP as*
18 *a natural community conservation plan pursuant to Chapter 10*
19 *(commencing with Section 2800) of Division 3 of the Fish and*
20 *Game Code, the council shall have at least one public hearing*
21 *concerning the incorporation of the BDCP into the Delta Plan.*

22 (e) *If the Department of Fish and Game approves the BDCP as*
23 *a natural community conservation plan pursuant to Chapter 10*
24 *(commencing with Section 2800) of Division 3 of the Fish and*
25 *Game Code and determines that the BDCP meets the requirements*
26 *of this section, and the BDCP has been approved as a habitat*
27 *conservation plan pursuant to the federal Endangered Species Act*
28 *(16 U.S.C. Section 1531 et seq.), the council shall incorporate the*
29 *BDCP into the Delta Plan. The Department of Fish and Game's*
30 *determination that the BDCP has met the requirements of this*
31 *section may be appealed to the council.*

32 (f) *The department, in coordination with the Department of Fish*
33 *and Game, or any successor agencies charged with BDCP*
34 *implementation, shall report to the council on the implementation*
35 *of the BDCP at least once a year, including the status of monitoring*
36 *programs and adaptive management.*

37 (g) *The council may make recommendations to BDCP*
38 *implementing agencies regarding the implementation of the BDCP.*
39 *BDCP implementing agencies shall consult with the council on*
40 *these recommendations. These recommendations shall not change*

1 *the terms and conditions of the permits issued by state and federal*
 2 *regulatory agencies.*

3 85321. *The BDCP shall include a transparent, real-time*
 4 *operational decisionmaking process in which fishery agencies*
 5 *ensure that applicable biological performance measures are*
 6 *achieved in a timely manner with respect to water system*
 7 *operations.*

8 85322. *This chapter does not amend, or create any additional*
 9 *legal obligation or cause of action under, Chapter 10 (commencing*
 10 *with Section 2800) of Division 3 of the Fish and Game Code or*
 11 *Division 13 (commencing with Section 21000) of the Public*
 12 *Resources Code.*

13

14 *CHAPTER 3. OTHER PLANS FOR THE DELTA*

15

16 85350. *The council may incorporate other completed plans*
 17 *related to the Delta into the Delta Plan to the extent that the other*
 18 *plans promote the coequal goals.*

19 *SEC. 3. (a) Pursuant to Section 75026 of the Public Resources*
 20 *Code, the sum of twenty-eight million dollars (\$28,000,000) is*
 21 *hereby appropriated to the Department of Water Resources for*
 22 *expenditure by that department pursuant to paragraph (12) of*
 23 *subdivision (a) of Section 75027 of the Public Resources Code for*
 24 *the Two-Gates Fish Protection Demonstration Program managed*
 25 *by the United States Bureau of Reclamation. The Department of*
 26 *Water Resources shall expend such funds only consistent with the*
 27 *requirements of Sections 75026 and 75027 of the Public Resources*
 28 *Code.*

29 *(b) It is the intent of the Legislature to finance the activities of*
 30 *the Delta Stewardship Council and the Sacramento-San Joaquin*
 31 *Delta Conservancy from funds made available pursuant to the*
 32 *Disaster Preparedness and Flood Prevention Bond Act of 2006*
 33 *(Chapter 1.699 (commencing with Section 5096.800) of Division*
 34 *5 of the Public Resources Code) and the Safe Drinking Water,*
 35 *Water Quality and Supply, Flood Control, River and Coastal*
 36 *Protection Bond Act of 2006 (Division 43 (commencing with*
 37 *Section 75001) of the Public Resources Code).*

38 *SEC. 4. If the Commission on State Mandates determines that*
 39 *this act contains costs mandated by the state, reimbursement to*
 40 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*
2 *4 of Title 2 of the Government Code.*

3 *SEC. 5. This act shall take effect only if Assembly Bill 8,*
4 *Assembly Bill 10, and Assembly Bill 11 of the 2009–10 Seventh*
5 *Extraordinary Session of the Legislature are enacted and become*
6 *effective.*

7 ~~SECTION 1. Division 35 (commencing with Section 85000)~~
8 ~~is added to the Water Code, to read:~~

9

10 ~~DIVISION 35. DELTA STEWARDSHIP COUNCIL~~

11

12 ~~85000. The Delta Stewardship Council is hereby established~~
13 ~~as an independent agency of the state.~~

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