

Proposed Conference Report No. 1  
September 9, 2009

AMENDED IN ASSEMBLY JULY 9, 2009

AMENDED IN SENATE JUNE 2, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE FEBRUARY 26, 2009

**SENATE BILL**

**No. 12**

---

---

**Introduced by Senator Simitian**

December 1, 2008

---

---

*An act relating to Sacramento-San Joaquin Delta. An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Section 1120 of, to add Division 35 (commencing with Section 85000) to, to add Chapter 2 (commencing with Section 85320) to Part 4 of Division 35 of, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to resources.*

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Simitian. *Resources: Sacramento-San Joaquin Delta Stewardship Council. Council.*

*(1) Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.*

*This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.*

*(2) 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 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 council would be required to establish a consultation process for the purposes of the act. 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, created pursuant to AB 39 of the 2009–10 Regular Session, 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 selected 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 instream 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.*

(3) *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.*

(4) *These provisions would only become operative if SB 229, SB 458, AB 39, and AB 49 of the 2009–10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.*

~~(1) Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the 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 declare legislative intent to enact legislation to establish the Sacramento-San Joaquin Delta Stewardship Council.~~

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

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

- 1 *SECTION 1. Section 6103.1 of the Government Code is*
- 2 *amended to read:*
- 3 *6103.1. Section 6103 does not apply to any fee or charge for*
- 4 *official services required by ~~Parts~~ Part 1 (commencing with Section*
- 5 *1000), Part 2 (commencing with Section 1200), Part 3*
- 6 *(commencing with Section 2000), ~~and~~ Part 4 (commencing with*
- 7 *Section 4000), Part 5 (commencing with Section 4999), or Part*
- 8 *5.1 (commencing with Section 5100) of Division 2, Division 7*

1 *(commencing with Section 13000), or Division 35 (commencing*  
 2 *with Section 85000) of the Water Code.*

3 *SEC. 2. Section 6103.4 of the Government Code is amended*  
 4 *to read:*

5 6103.4. Section 6103 does not apply to any fee or charge for  
 6 official services required by Section 100860 of the Health and  
 7 Safety Code, ~~or Part 5 (commencing with Section 4999) of Division~~  
 8 ~~2, or Division 7 (commencing with Section 13000), of the Water~~  
 9 ~~Code.~~

10 *SEC. 3. Section 1120 of the Water Code is amended to read:*

11 1120. This chapter applies to any decision or order issued under  
 12 this part or Section 275, Part 2 (commencing with Section 1200),  
 13 Part 2 (commencing with Section 10500) of Division 6, Article 7  
 14 (commencing with Section 13550) of Chapter 7 of Division 7,  
 15 *Section 85230, or the public trust doctrine.*

16 *SEC. 4. Division 26.4 (commencing with Section 79400) of*  
 17 *the Water Code is repealed.*

18 *SEC. 5. Division 35 (commencing with Section 85000) is added*  
 19 *to the Water Code, to read:*

20  
 21 *DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA*  
 22 *REFORM ACT OF 2009*

23  
 24 *PART 1. GENERAL PROVISIONS*

25  
 26 *CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS*

27  
 28 85000. *This division shall be known, and may be cited, as the*  
 29 *Sacramento-San Joaquin Delta Reform Act of 2009.*

30 85001. *The Legislature finds and declares all of the following:*

31 *(a) The Sacramento-San Joaquin Delta watershed and*  
 32 *California’s water infrastructure are in crisis and existing Delta*  
 33 *policies are not sustainable. Resolving the crisis requires*  
 34 *fundamental reorganization of the state’s management of Delta*  
 35 *watershed resources.*

36 *(b) In response to the Delta crisis, the Legislature and the*  
 37 *Governor required development of a new long-term strategic vision*  
 38 *for managing the Delta. The Governor appointed a Blue Ribbon*  
 39 *Task Force to recommend a new “Delta Vision Strategic Plan”*  
 40 *to his cabinet committee, which, in turn, made recommendations*

1 *for a Delta Vision to the Governor and the Legislature on January*  
2 *3, 2009.*

3 *(c) By enacting this division, it is the intent of the Legislature*  
4 *to facilitate the implementation of a program for the sustainable*  
5 *management of the Sacramento-San Joaquin Delta ecosystem and*  
6 *to establish a governance structure that will direct efforts across*  
7 *state agencies to develop a legally enforceable Delta Plan.*

8 *85002. The Legislature finds and declares that the*  
9 *Sacramento-San Joaquin Delta, referred to as “the Delta” in this*  
10 *division, is a critically important natural resource for California*  
11 *and the nation. It serves Californians concurrently as both the hub*  
12 *of the California water system and the most valuable estuary and*  
13 *wetland ecosystem on the west coast of North and South America.*

14 *85003. The Legislature finds and declares all of the following:*

15 *(a) Originally, the Delta was a shallow wetland with water*  
16 *covering the area for many months of the year. Natural levees,*  
17 *created by deposits of sediment, allowed some islands to emerge*  
18 *during the dry summer months. Salinity would fluctuate, depending*  
19 *on the season and the amount of precipitation in any one year,*  
20 *and the species that comprised the Delta ecosystem had evolved*  
21 *and adapted to this unique, dynamic system.*

22 *(b) Delta property ownership developed pursuant to the federal*  
23 *Swamp Land Act of 1850, and state legislation enacted in 1861,*  
24 *and as a result of the construction of levees to keep previously*  
25 *seasonal wetlands dry throughout the year. That property*  
26 *ownership, and the exercise of associated rights, continue to*  
27 *depend on the landowners’ maintenance of those nonproject levees*  
28 *and do not include any right to state funding of levee maintenance*  
29 *or repair.*

30 *(c) In 1933, the Legislature approved the California Central*  
31 *Valley Project Act, which relied upon the transfer of Sacramento*  
32 *River water south through the Delta and maintenance of a more*  
33 *constant salinity regime by using upstream reservoir releases of*  
34 *freshwater to create a hydraulic salinity barrier. As a result of the*  
35 *operations of state and federal water projects, the natural salinity*  
36 *variations in the Delta have been altered. Restoring a healthy*  
37 *estuarine ecosystem in the Delta may require developing a more*  
38 *natural salinity regime in parts of the Delta.*

## CHAPTER 2. DELTA POLICY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

*85020. The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:*

*(a) Manage the Delta's water and environmental resources and the water resources of the state over the long-term.*

*(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.*

*(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.*

*(d) Promote statewide water conservation, water use efficiency, and sustainable water use.*

*(e) Achieve water quality objectives in the Delta.*

*(f) Improve the existing water conveyance system and expand statewide water storage.*

*(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.*

*(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.*

*85021. The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water-use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water-use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.*

*85022. (a) It is the intent of the Legislature that state and local land use actions be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land-use planning and development.*

*(b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.*

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

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

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

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

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

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

20     (1) *Protect, maintain, enhance, and, where feasible, restore the*  
21 *overall quality of the Delta environment and its natural and*  
22 *artificial resources.*

23     (2) *Ensure the utilization and conservation of Delta resources*  
24 *taking into account the social and economic needs of the people*  
25 *of the state.*

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

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

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

37     85023.     *The longstanding constitutional principle of*  
38 *reasonable use and the public trust doctrine shall be the foundation*  
39 *of state water management policy and are particularly important*  
40 *and applicable to the Delta.*

## CHAPTER 3. MISCELLANEOUS PROVISIONS

1  
2

3 85031. This division does not diminish, impair, or otherwise  
4 affect any area of origin, watershed of origin, county of origin, or  
5 any other water rights protections provided under the law. This  
6 division does not limit or otherwise affect the application of  
7 Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463,  
8 and Sections 12200 to 12220, inclusive.

9 85032. This division does not affect any of the following:

10 (a) The Natural Community Conservation Planning Act (Chapter  
11 10 (commencing with Section 2800) of Division 3 of the Fish and  
12 Game Code).

13 (b) The California Endangered Species Act (Chapter 1.5  
14 (commencing with Section 2050) of Division 3 of the Fish and  
15 Game Code).

16 (c) The Fish and Game Code.

17 (d) The Porter-Cologne Water Quality Control Act (Division 7  
18 (commencing with Section 13000)).

19 (e) The application of the public trust doctrine.

20 (f) Any water right.

21 (g) The liability of the state for flood protection in the Delta or  
22 its watershed.

23 85034. (a) (1) The council shall administer all contracts,  
24 grants, easements, and agreements made or entered into by the  
25 California Bay-Delta Authority under Division 26.4 (commencing  
26 with Section 79400), as that division read on December 31, 2009.

27 (2) The exercise of the authority described in paragraph (1) is  
28 not subject to review or approval by the Department of General  
29 Services.

30 (3) A contract, lease, license, or any other agreement to which  
31 the California Bay-Delta Authority is a party is not void or  
32 voidable as a result of the implementation of this subdivision, but  
33 shall continue in full force and effect until the end of its term.

34 (b) The council shall be the successor to and shall assume from  
35 the California Bay-Delta Authority all of the administrative rights,  
36 abilities, obligations, and duties of that authority.

37 (c) The council shall have possession and control of all records,  
38 papers, equipment, supplies, contracts, leases, agreements, and  
39 other property, real or personal, connected with the administration  
40 of Division 26.4 (commencing with Section 79400), as that division

1 read on December 31, 2009, or held for the benefit or use of the  
2 California Bay-Delta Authority.

3 (d) The council shall assume from the California Bay-Delta  
4 Authority all responsibility to manage the science program element  
5 that was required to be undertaken by Division 26.4 (commencing  
6 with Section 79400), as that division read on December 31, 2009.

7  
8 CHAPTER 4. DEFINITIONS  
9

10 85050. Unless the context otherwise requires, the definitions  
11 set forth in this chapter govern the construction of this division.

12 85051. “Acquisition” means the acquisition of a fee interest  
13 or any other interest, including easements, leases, and development  
14 rights.

15 85052. “Adaptive management” means a framework and  
16 flexible decisionmaking process for ongoing knowledge acquisition,  
17 monitoring, and evaluation leading to continuous improvement in  
18 management planning and implementation of a project to achieve  
19 specified objectives.

20 85053. “Bay Delta Conservation Plan” or “BDCP” means  
21 a natural community conservation plan that complies with the  
22 Natural Community Conservation Planning Act (Chapter 10  
23 (commencing with Section 2800) of Division 3 of the Fish and  
24 Game Code), and complies with Section 10 of the federal  
25 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) and  
26 accompanying regulations.

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

33 85055. “Commission” means the Delta Protection  
34 Commission established in Division 19.5 (commencing with Section  
35 29700) of the Public Resources Code.

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

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

1 85057.5. (a) “Covered action” means a plan, program,  
2 project, or activity that, in whole or in part:

3 (1) Will occur within the boundaries of the Delta or Suisun  
4 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 a regulatory action of  
13 a state agency.

14 85058. “Delta” means the Sacramento-San Joaquin Delta  
15 as defined in Section 12220, the Suisun Marsh as defined in Section  
16 29101 of the Public Resources Code, and the Yolo Bypass.

17 85059. “Delta Plan” means the comprehensive, long-term  
18 management plan for the Delta as adopted by the council in  
19 accordance with this division.

20 85060. “Delta watershed” means the Sacramento River  
21 Hydrologic Region and the San Joaquin River Hydrologic Region  
22 as described in the department’s Bulletin No. 160-05.

23 85064. “Public water agency” means a public entity, as  
24 defined in Section 514, that provides water service, as defined in  
25 Section 515.

26 85066. “Restoration” means the application of ecological  
27 principles to restore a degraded or fragmented ecosystem and  
28 return it to a condition in which its biological and structural  
29 components achieve a close approximation of its natural potential,  
30 taking into consideration the physical changes that have occurred  
31 in the past and the future impact of climate change and sea level  
32 rise.

33 85067. “Strategic Plan” means both the “Delta Vision  
34 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force  
35 on October 17, 2008, and the “Delta Vision Implementation  
36 Report” adopted by the Delta Vision Committee and dated  
37 December 31, 2008.

PART 2. EARLY ACTIONS

1  
2  
3 85080. *The council shall appoint a Delta Independent Science*  
4 *Board, in accordance with Section 85280.*

5 85082. *The council shall develop and implement a strategy*  
6 *to appropriately engage participation of the federal agencies with*  
7 *responsibilities in the Delta. This strategy shall include engaging*  
8 *these federal agencies to develop the Delta Plan consistent with*  
9 *the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec.*  
10 *1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251*  
11 *et seq.), and Section 8 of the federal Reclamation Act of 1902.*

12 85084. *The council shall develop an interim plan that includes*  
13 *recommendations for early actions, projects, and programs.*

14 85084.5. *The Department of Fish and Game, in consultation*  
15 *with the United States Fish and Wildlife Service and the National*  
16 *Marine Fisheries Service and based on the best available science,*  
17 *shall develop and recommend to the board Delta flow criteria and*  
18 *quantifiable biological objectives for aquatic and terrestrial species*  
19 *of concern dependent on the Delta. The recommendations shall*  
20 *be developed no later than 12 months after the date of enactment*  
21 *of this division.*

22 85085. *The department shall do all of the following:*

23 (a) *Assist the United States Bureau of Reclamation in*  
24 *implementation of a study of the Middle River Corridor*  
25 *Two-Barrier pilot project.*

26 (b) *Evaluate the effectiveness of the Three Mile Slough Barrier*  
27 *project.*

28 (c) *Construct demonstration fish protection screens at Clifton*  
29 *Court Forebay.*

30 (d) *Assist the Department of Fish and Game in implementing*  
31 *early action ecosystem restoration projects, including, but not*  
32 *limited to, Dutch Slough tidal marsh restoration, Meins Island*  
33 *tidal marsh restoration, and floodplain and floodway improvements*  
34 *in the Yolo Bypass.*

35 85086. (a) *The board shall establish an effective system of*  
36 *Delta watershed diversion data collection and public reporting*  
37 *by December 31, 2010.*

38 (b) *It is the intent of the Legislature to establish an accelerated*  
39 *process to determine instream flow needs of the Delta for the*

1 *purposes of facilitating the planning decisions that are required*  
2 *to achieve the objectives of the Delta Plan.*

3 *(c) (1) Pursuant to its public trust obligations, the board shall*  
4 *develop new flow criteria for the Delta ecosystem necessary to*  
5 *protect public trust resources. In carrying out this section, the*  
6 *board shall review existing water quality objectives and use the*  
7 *best available scientific information. The flow criteria for the Delta*  
8 *ecosystem shall include the volume, quality, and timing of water*  
9 *necessary for the Delta ecosystem under different conditions. The*  
10 *flow criteria shall be developed in a public process by the board*  
11 *within nine months of the enactment of this division. The flow*  
12 *criteria shall not be considered predecisional with regard to any*  
13 *subsequent board consideration of a permit, including any permit*  
14 *in connection with a final BDCP.*

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

24 *(3) Nothing in this section limits the board's authority in any*  
25 *proceeding to review the water rights of a person who diverts*  
26 *water in the Delta watershed, or to incorporate terms and*  
27 *conditions in that persons' water rights to contribute to the*  
28 *implementation of the flow criteria.*

29 *(4) Nothing in this section amends or otherwise affects the*  
30 *application of the board's authority under Part 2 (commencing*  
31 *with Section 1200) of Division 2 to include terms and conditions*  
32 *on permits that in its judgment will best develop, conserve, and*  
33 *utilize in the public interest the water sought to be appropriated.*

34 *(d) The board shall enter into an agreement with the State Water*  
35 *Project contractors and the federal Central Valley Project*  
36 *contractors, who rely on water exported from the Sacramento*  
37 *River watershed, or a joint powers authority comprised of those*  
38 *contractors, for reimbursement of the costs of the analysis*  
39 *conducted pursuant to this section.*

1 (e) The board shall submit its flow criteria determinations  
2 pursuant to this section to the council for its information within  
3 30 days of completing the determinations.

4 85087. The board, by December 31, 2010, shall submit to the  
5 Legislature a prioritized schedule and estimate of costs to complete  
6 instream flow studies for the Delta and for high priority rivers and  
7 streams in the Delta watershed, not otherwise covered by Section  
8 85086, by 2012, and for all major rivers and streams outside the  
9 Sacramento River watershed by 2018. In developing this schedule,  
10 the board shall consult with the Department of Fish and Game as  
11 to the timing of its submission of recommendations for instream  
12 flow needs.

13 85088. Until the board issues an order approving a change  
14 in the point of diversion of the State Water Project and the federal  
15 Central Valley Project from the southern Delta to a point on the  
16 Sacramento River as specified in subdivision (c) of Section 85086,  
17 the department shall not commence construction of any diversion,  
18 conveyance, or other facility necessary to divert and convey water  
19 pursuant to the change in point of diversion.

20  
21 **PART 3. DELTA GOVERNANCE**

22  
23 **CHAPTER 1. DELTA STEWARDSHIP COUNCIL**

24  
25 85200. (a) The Delta Stewardship Council is hereby  
26 established as an independent agency of the state.

27 (b) (1) The council shall consist of seven members, of which  
28 four members shall be appointed by the Governor and confirmed  
29 by the Senate, one member shall be appointed by the Senate  
30 Committee on Rules, one member shall be appointed by the Speaker  
31 of the Assembly, and one member shall be the Chairperson of the  
32 Delta Protection Commission. Initial appointments to the council  
33 shall be made by July 1, 2010.

34 (2) The initial term of office of each member of the council shall  
35 be one, two, three, or four years, as specified in subdivision (c),  
36 and all subsequent terms shall be four years.

37 (3) No member of the council shall serve two consecutive terms,  
38 but a member may be reappointed after a period of two years  
39 following the end of his or her term, except that those members of

1 *the council that serve an initial term of one or two years may be*  
2 *immediately appointed to a subsequent full four-year term.*

3 *(c) The Governor, upon his or her appointment of members*  
4 *pursuant to subdivision (b), shall designate the appointees as*  
5 *servng initial terms of either one or two years. One class shall*  
6 *have three members and the other two classes shall have two*  
7 *members each. For the class that has three members, the terms of*  
8 *office shall be one year. The second class, composed of two*  
9 *members, shall serve two years. The third class, composed of two*  
10 *members, one each appointed by the Senate Committee on Rules*  
11 *and the Speaker of the Assembly, by July 1, 2010, shall serve four*  
12 *years. Thereafter, the terms of all succeeding members shall be*  
13 *four years.*

14 *(d) Any vacancy shall be filled by the appointing authority within*  
15 *60 days. If the term of a council member expires, and no successor*  
16 *is appointed within the allotted timeframe, the existing member*  
17 *may serve up to 180 days beyond the expiration of his or her term.*

18 *(e) The council members shall select a chairperson from among*  
19 *its members, who shall serve for not more than four years in that*  
20 *capacity.*

21 *(f) The council shall meet once a month in a public forum. At*  
22 *least two meetings each year shall take place at a location within*  
23 *the Delta.*

24 *85201. The chairperson shall serve full time. Other members*  
25 *shall serve one-third time. The council may select a vice*  
26 *chairperson and other officers determined to be necessary.*

27 *(a) Each member of the council shall receive the salary provided*  
28 *for in Section 11564 of the Government Code.*

29 *(b) The members of the council shall be reimbursed for expenses*  
30 *necessarily incurred in the performance of official duties.*

31 *(c) The council shall appoint an executive officer who shall*  
32 *serve full time at the pleasure of the council.*

33 *(d) The executive officer shall hire employees necessary to carry*  
34 *out council functions.*

35 *(e) The number of employees and qualifications of those*  
36 *employees shall be determined by the council, subject to the*  
37 *availability of funds.*

38 *(f) The salary of each employee of the council shall be*  
39 *determined by the State Personnel Board, and shall reflect the*  
40 *duties and responsibilities of the position.*

1 (g) All persons employed by the council are state employees,  
2 subject to the duties, responsibilities, limitations, and benefits of  
3 the state.

4 85202. Council members shall possess diverse expertise and  
5 reflect a statewide perspective.

6 85203. The headquarters of the council shall be located in  
7 Sacramento.

8 85204. The council shall establish and oversee a committee  
9 of agencies responsible for implementing the Delta Plan. Each  
10 agency shall coordinate its actions pursuant to the Delta Plan with  
11 the council and the other relevant agencies.

12  
13 *CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE*  
14 *COUNCIL*

15  
16 85210. The council has all of the following powers:

17 (a) To sue or be sued.

18 (b) To enter into contracts.

19 (c) To employ the services of public, nonprofit, and private  
20 entities.

21 (d) To delegate administrative functions to council staff.

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

26 (f) To receive funds, including funds from private and local  
27 governmental sources, contributions from public and private  
28 sources, as well as state and federal appropriations.

29 (g) To disburse funds through grants, public assistance, loans,  
30 and contracts.

31 (h) To request reports from state, federal, and local  
32 governmental agencies on issues related to the implementation of  
33 the Delta Plan.

34 (i) To adopt regulations as required for the implementation of  
35 this division.

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

39 (k) To hold hearings in all parts of the state necessary to carry  
40 out the powers vested in it, and for those purposes has the powers

1 conferred upon the heads of state departments pursuant to Article  
2 2 (commencing with Section 11180) of Chapter 2 of Part 1 of  
3 Division 3 of Title 2 of the Government Code. Any hearing by the  
4 council may be conducted by any member of the council, or other  
5 designee, upon authorization of the council, and he or she shall  
6 have the powers granted to the council by this section, provided  
7 that any final action of the council shall be taken by a majority of  
8 the members of the council at a meeting duly called and held.

9 85211. The Delta Plan shall include performance  
10 measurements that will enable the council to track progress in  
11 meeting the objectives of the Delta Plan. The performance  
12 measurements shall include, but need not be limited to, quantitative  
13 or otherwise measurable assessments of the status and trends in  
14 all of the following:

15 (a) The health of the Delta's estuary and wetland ecosystem for  
16 supporting viable populations of aquatic and terrestrial species,  
17 habitats, and processes, including viable populations of Delta  
18 fisheries and other aquatic organisms.

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

21 85212. (a) The council shall adopt a consultation process  
22 for the purposes of this division with all state agencies,  
23 departments, boards, and commissions that have specified  
24 responsibilities to develop, implement, monitor, and adhere to all  
25 or part of the Delta Plan. The council shall ensure, to the maximum  
26 extent practicable, that the actions of these entities are consistent  
27 with the Delta Plan. Pursuant to this subdivision, the council may  
28 initiate consultation when an action by a state agency is contrary  
29 to the Delta Plan.

30 (b) Any affected person may seek review by the council of an  
31 actual or proposed action of a state agency to determine whether  
32 that action is consistent with the Delta Plan. The council shall  
33 establish guidelines to implement this subdivision.

34 85220. Nothing in this chapter affects the authority of the  
35 Department of Fish and Game or the board.



1 *raise an appealable issue. The council shall make its decision on*  
2 *the appeal within 60 days of hearing the appeal.*

3 85225.25. *After a hearing on an appealed action, the council*  
4 *shall make specific findings either denying the appeal or remanding*  
5 *the matter to the state or local public agency for reconsideration*  
6 *of the covered action based on the findings of the council. Upon*  
7 *remand, the state or local public agency may determine not to*  
8 *proceed with the covered action or may modify the appealed action*  
9 *and resubmit the certification of consistency to the council. A*  
10 *proposed covered action appealed pursuant to these provisions*  
11 *and remanded to the state or local public agency shall not be*  
12 *implemented until the council has adopted written findings, based*  
13 *on substantial evidence in the record, that the covered action, as*  
14 *modified, is consistent with the Delta Plan.*

15 85225.30. *The council shall adopt administrative procedures*  
16 *governing appeals, which shall be exempt from Chapter 3.5*  
17 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
18 *2 of the Government Code.*

19

20 *CHAPTER 4. DELTA WATERMASTER*

21

22 85230. (a) *The board, in consultation with the council, shall*  
23 *appoint, for a term of four years, a special master for the Delta,*  
24 *whose title shall be “the Delta Watermaster.”*

25 (b) *The board shall adopt internal procedures delegating*  
26 *authority to the Delta Watermaster. The Delta Watermaster shall*  
27 *exercise the board’s authority to provide timely monitoring and*  
28 *enforcement of board orders and permit terms and conditions. The*  
29 *Delta Watermaster’s delegated authority shall include, but not be*  
30 *limited to, authority to require monitoring and reporting, authority*  
31 *for approvals delegated to an officer or employee of the board by*  
32 *the terms of a water right permit or license, authority to approve*  
33 *temporary urgency changes, and authority to issue a notice of*  
34 *proposed cease and desist order or administrative civil liability*  
35 *complaint.*

36 (c) *The internal procedures adopted by the board shall provide*  
37 *for due process in adjudicative proceedings, and may establish*  
38 *procedures for the issuance of a stay of any order or decision of*  
39 *the Delta Watermaster for which a petition for reconsideration is*  
40 *filed or reconsideration is ordered under Section 1122. The board*

1 *may provide any additional duties or needs of the Delta*  
2 *Watermaster that the board deems necessary for effective*  
3 *day-to-day enforcement of its decisions.*

4 *(d) The Delta Watermaster shall submit regular reports to the*  
5 *board and the council including, but not limited to, reports on*  
6 *water rights administration, water quality issues, and conveyance*  
7 *operations.*

8

9 *CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA*  
10 *SCIENCE PROGRAM*

11

12 *85280. (a) The Delta Independent Science Board is hereby*  
13 *established in state government.*

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

18 *(2) Members of the Delta Independent Science Board shall be*  
19 *nationally or internationally prominent scientists with appropriate*  
20 *expertise to evaluate the broad range of scientific programs that*  
21 *support adaptive management of the Delta. The members shall*  
22 *not be directly affiliated with a program or agency subject to the*  
23 *review activities of the Delta Independent Science Board.*

24 *(3) The Delta Independent Science Board shall provide oversight*  
25 *of the scientific research, monitoring, and assessment programs*  
26 *that support adaptive management of the Delta through periodic*  
27 *reviews of each of those programs that shall be scheduled to ensure*  
28 *that all Delta scientific research, monitoring, and assessment*  
29 *programs are reviewed at least once every four years.*

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

34 *(b) After consultation with the Delta Independent Science Board,*  
35 *the council shall appoint a lead scientist for the Delta Science*  
36 *Program.*

37 *(1) The lead scientist shall meet all of the following*  
38 *qualifications:*

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

1 (B) Have a strong record of scientific research and publication  
 2 in peer-reviewed scientific journals in a field related to water or  
 3 ecosystem management.

4 (C) Have experience advising high-level managers in  
 5 science-based decisionmaking in the areas of water management  
 6 and ecosystem restoration.

7 (D) Have the capability to guide the application of an adaptive  
 8 management process to resource management policy decision in  
 9 the Delta.

10 (2) The term of office for the lead scientist shall be no more  
 11 than three years. The lead scientist may serve no more than two  
 12 terms.

13 (3) The lead scientist shall oversee the implementation of the  
 14 Delta Science Program. In carrying out that responsibility, the  
 15 lead scientist shall regularly consult with the agencies participating  
 16 in the program.

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

27 (c) The Delta Science Program shall function as a replacement  
 28 for, and successor to, the CALFED Science Program and the Delta  
 29 Independent Science Board shall replace the CALFED Independent  
 30 Science Board.

31 SEC. 6. Chapter 2 (commencing with Section 85320) is added  
 32 to Part 4 of Division 35 of the Water Code, to read:

33

34 *CHAPTER 2. BAY DELTA CONSERVATION PLAN*

35

36 85320. (a) The Bay Delta Conservation Plan (BDCP) shall  
 37 be considered for inclusion in the Delta Plan based on the  
 38 provisions of this chapter.

39 (b) The BDCP shall not be incorporated into the Delta Plan  
 40 and the public benefits associated with the BDCP shall not be

1 eligible for state funding, unless the BDCP does all of the  
2 following:

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

5 (2) Complies with Division 13 (commencing with Section 21000)  
6 of the Public Resources Code, including a comprehensive review  
7 and analysis of all of the following:

8 (A) A reasonable range of flow criteria, rates of diversion, and  
9 other operational criteria required to satisfy the criteria for  
10 approval of a natural community conservation plan as provided  
11 in subdivision (a) of Section 2820 of the Fish and Game Code, and  
12 other operational requirements and flows necessary for recovering  
13 the Delta ecosystem and restoring fisheries under a reasonable  
14 range of hydrologic conditions, which will identify the remaining  
15 water available for export and other beneficial uses.

16 (B) A reasonable range of Delta conveyance alternatives,  
17 including through-Delta, dual conveyance, and isolated conveyance  
18 alternatives and including further capacity and design options of  
19 a lined canal, an unlined canal, and pipelines.

20 (C) The potential effects of climate change, possible sea level  
21 rise up to 55 inches, and possible changes in total precipitation  
22 and runoff patterns on the conveyance alternatives and habitat  
23 restoration activities considered in the environmental impact  
24 report.

25 (D) The potential effects on migratory fish and aquatic  
26 resources.

27 (E) The potential effects on Sacramento River and San Joaquin  
28 River flood management.

29 (F) The resilience and recovery of conveyance alternatives in  
30 the event of catastrophic loss caused by earthquake or flood or  
31 other natural disaster.

32 (G) The potential effects of each conveyance alternative on  
33 Delta water quality.

34 (c) The department shall consult with the council and the Delta  
35 Independent Science Board during the development of the BDCP.  
36 The council shall be a responsible agency in the development of  
37 the environmental impact report. The Delta Independent Science  
38 Board shall review the draft environmental impact report and  
39 submit its comments to the council and the Department of Fish  
40 and Game.

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

6 (e) If the Department of Fish and Game approves the BDCP as  
7 a natural community conservation plan pursuant to Chapter 10  
8 (commencing with Section 2800) of Division 3 of the Fish and  
9 Game Code and determines that the BDCP meets the requirements  
10 of this section, and the BDCP has been approved as a habitat  
11 conservation plan pursuant to the federal Endangered Species Act  
12 (16 U.S.C. Section 1531 et seq.), the council shall incorporate the  
13 BDCP into the Delta Plan. The Department of Fish and Game's  
14 determination that the BDCP has met the requirements of this  
15 section may be appealed to the council.

16 (f) The department, in coordination with the Department of Fish  
17 and Game, or any successor agencies charged with BDCP  
18 implementation, shall report to the council on the implementation  
19 of the BDCP at least once a year, including the status of monitoring  
20 programs and adaptive management.

21 (g) The council may make recommendations to BDCP  
22 implementing agencies regarding the implementation of the BDCP.  
23 BDCP implementing agencies shall consult with the council on  
24 these recommendations. These recommendations shall not change  
25 the terms and conditions of the permits issued by state and federal  
26 regulatory agencies.

27 85321. The BDCP shall include a transparent, real-time  
28 operational decisionmaking process in which fishery agencies  
29 ensure that applicable biological performance measures are  
30 achieved in a timely manner with respect to water system  
31 operations.

32 85322. This chapter does not amend, or create any additional  
33 legal obligation or cause of action under, Chapter 10 (commencing  
34 with Section 2800) of Division 3 of the Fish and Game Code, or  
35 Division 13 (commencing with Section 21000) of the Public  
36 Resources Code.

37 SEC. 7. The bill shall only become operative if SB 229, SB  
38 458, AB 39, and AB 49 of the 2009–10 Regular Session of the  
39 Legislature, relating to water use and resource management, are  
40 enacted and become effective on or before January 1, 2010.

1     ~~SECTION 1. It is the intent of the Legislature to enact~~  
2     ~~legislation to establish the Sacramento-San Joaquin Delta~~  
3     ~~Stewardship Council.~~

4

5

6     CORRECTIONS:                     \_\_\_\_\_

7     Heading—Amended date.

8

O