

AMENDED IN SENATE OCTOBER 29, 2009

CALIFORNIA LEGISLATURE—2009—10 SEVENTH EXTRAORDINARY SESSION

SENATE BILL

No. 1

Introduced by ~~Senator Steinberg~~ *Senators Simitian and Steinberg*

October 23, 2009

~~An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, to amend Sections 375, 1052, 1055, 1055.2, 1120, 1525, 1535, 1538, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1240.5, 1846, and 1847 to, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, to add Part 2.55 (commencing with Section 10608) and Part 2.11 (commencing with Section 10920) to Division 6 of, to add Division 35 (commencing with Section 85000) to, to repeal Section 5108 of, to repeal Division 26.4 (commencing with Section 79400) of, to repeal and add Section 12924 of, and to repeal and add Part 2.8 (commencing with Section 10800) of Division 6 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to public resources, and making an appropriation therefor. An act to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to~~

add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, and 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 public resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, ~~Steinberg~~ *Simitian*. Public resources.

(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 (Delta Protection Act) 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 (Delta).

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members from 23 to 15 members, as specified. The bill would require the commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require the commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature, would be required to be expended by the commission to implement the regional economic sustainability plan.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a primary state agency to implement ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill

would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be required to be consistent with certain plans. The bill would establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

(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 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.

(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) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. “Demand management measures” means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.~~

~~This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. The bill would require each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements. The bill would require agricultural water suppliers to implement efficient water management practices. The bill would require the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, would provide that urban retail water suppliers, on and after July 1, 2016, and agricultural water suppliers, on and after July 1, 2013, are not eligible for state water grants or loans unless they comply with the water conservation requirements~~

established by the bill. The bill would repeal, on July 1, 2016, an existing requirement that conditions eligibility for certain water management grants or loans to an urban water supplier on the implementation of certain water demand management measures.

~~(5) Existing law, until January 1, 1993, and thereafter only as specified, requires certain agricultural water suppliers to prepare and adopt water management plans.~~

~~This bill would revise existing law relating to agricultural water management planning to require agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and update those plans on or before December 31, 2015, and on or before December 31 every 5 years thereafter. An agricultural water supplier that becomes an agricultural water supplier after December 31, 2012, would be required to prepare and adopt an agricultural water management plan within one year after becoming an agricultural water supplier. The agricultural water supplier would be required to notify each city or county within which the supplier provides water supplies with regard to the preparation or review of the plan. The bill would require the agricultural water supplier to submit copies of the plan to the department and other specified entities. The bill would provide that an agricultural water supplier is not eligible for state water grants or loans unless the supplier complies with the water management planning requirements established by the bill.~~

~~(6) Existing law generally prohibits 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, from being 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 for official services relating to statements of water diversion and use.~~

~~(7) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the~~

board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(8) Existing law authorizes the State Water Resources Control Board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill would authorize the board to initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of rights.

(9) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount.

(10) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second

or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule.

The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the electronic filing of reports of water diversion or use that are required to be filed with those respective state agencies under specified statutory provisions.

The bill would establish a rebuttable presumption, in any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(11) Existing law authorizes the State Water Resources Control Board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs.

Revenue generated from these penalties is deposited in the Water Rights Fund.

~~This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order.~~

~~The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.~~

~~The bill would require that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was reported to the board within 6 months after it is required to be filed with the board.~~

~~(12) Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.~~

~~This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, and to require additional monitoring wells under certain circumstances. If the department makes a specified determination~~

~~with regard to a basin or subbasin, the department would be required to notify the counties within which that basin or subbasin is located. Upon such notification, the counties would be required to take certain action related to groundwater monitoring, thereby imposing a state-mandated local program. Under certain circumstances, specified entities with authority to assume groundwater monitoring functions with regard to a basin or subbasin would not be eligible for a water grant or loan awarded or administered by the state, unless certain actions occur.~~

~~(13) Existing law requires the department to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.~~

~~This bill would repeal that provision. The department would be required to conduct an investigation of the state's groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every 5 years thereafter.~~

~~(14)~~

~~(4) 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 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.~~

~~(15) The Budget Act of 2009 made appropriations for the support of the State Water Resources Control Board for the 2009-10 fiscal year, with certain payments from the Water Rights Fund.~~

~~This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water rights enforcement. The bill would, commencing with the 2010–11 fiscal year, continuously appropriate \$3,750,000 on an annual basis only from fee revenue in the fund to the board for the purpose of funding permanent water rights enforcement positions.~~

~~(16) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(5) 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.~~

~~(16)~~

~~(6) The bill would take effect only if _____ SB 5, SB 6, and SB 7 of the 2009–10 Seventh 7th Extraordinary Session of the Legislature is are enacted and becomes operative become effective.~~

~~Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.~~

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

1 *SECTION 1. Section 29702 of the Public Resources Code is*
2 *amended to read:*

3 *29702. The Legislature further finds and declares that the basic*
4 *goals of the state for the ~~delta~~ Delta are the following:*

5 *(a) Achieve the two coequal goals of providing a more reliable*
6 *water supply for California and protecting, restoring, and*
7 *enhancing the Delta ecosystem. The coequal goals shall be*
8 *achieved in a manner that protects and enhances the unique*

1 *cultural, recreational, natural resource, and agricultural values*
2 *of the Delta as an evolving place.*

3 ~~(a)~~

4 *(b) Protect, maintain, and, where possible, enhance and restore*
5 *the overall quality of the ~~delta~~ Delta environment, including, but*
6 *not limited to, agriculture, wildlife habitat, and recreational*
7 *activities.*

8 ~~(b) Assure~~

9 *(c) Ensure orderly, balanced conservation and development of*
10 *delta Delta land resources.*

11 ~~(e)~~

12 *(d) Improve flood protection by structural and nonstructural*
13 *means to ensure an increased level of public health and safety.*

14 *SEC. 2. Section 29703.5 is added to the Public Resources Code,*
15 *to read:*

16 *29703.5. The Legislature further finds and declares both of*
17 *the following:*

18 *(a) The Delta Protection Commission created pursuant to*
19 *Section 29735 provides an existing forum for Delta residents to*
20 *engage in decisions regarding actions to recognize and enhance*
21 *the unique cultural, recreational, and agricultural resources of*
22 *the Delta. As such, the commission is the appropriate agency to*
23 *identify and provide recommendations to the Delta Stewardship*
24 *Council on methods of preserving the Delta as an evolving place*
25 *as the Delta Stewardship Council develops and implements the*
26 *Delta Plan.*

27 *(b) There is a need for the five Delta counties to establish and*
28 *implement a resources management plan for the Delta and for the*
29 *Delta Stewardship Council to consider that plan and*
30 *recommendations of the commission in the adoption of the Delta*
31 *Plan.*

32 *SEC. 3. Section 29722.5 is added to the Public Resources Code,*
33 *to read:*

34 *29722.5. "Delta Plan" means the plan adopted by the Delta*
35 *Stewardship Council pursuant to Section 85300 of the Water Code.*

36 *SEC. 4. Section 29722.7 is added to the Public Resources Code,*
37 *to read:*

38 *29722.7. "Economic sustainability plan" means the plan*
39 *adopted by the commission pursuant to Section 29759.*

1 SEC. 5. Section 29725 of the Public Resources Code is
 2 amended to read:

3 29725. “Local government” means the Counties of Contra
 4 Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities
 5 of Sacramento, Stockton, Tracy, Antioch, Pittsburg, ~~Isleton~~
 6 ~~Osladin~~, Lathrop, Brentwood, ~~Rio Vista~~, West Sacramento, and
 7 Oakley, and any other cities that may be incorporated in the future
 8 in the primary zone.

9 SEC. 6. Section 29727 of the Public Resources Code is
 10 amended to read:

11 29727. “Port” means the Port of Sacramento and the Port of
 12 Stockton, including all the land owned or leased by those ports,
 13 or potential sites identified in the Delta county general plans as
 14 of January 1, 2010, and otherwise authorized by law.

15 SEC. 7. Section 29728.5 is added to the Public Resources Code,
 16 to read:

17 29728.5. “Resources management plan” means the plan
 18 adopted by the commission pursuant to Section 29760.

19 SEC. 8. Section 29733 of the Public Resources Code is
 20 amended to read:

21 29733. “Unincorporated towns” means the communities of
 22 Walnut Grove, Clarksburg, Courtland, Hood, Locke, *Knightsen*,
 23 *Collinsville*, and Ryde.

24 SEC. 9. Section 29735 of the Public Resources Code is
 25 amended to read:

26 29735. There is hereby created the Delta Protection
 27 Commission consisting of ~~23~~ 15 members as follows:

28 (a) One member of the board of supervisors, or his or her
 29 designee, of each of the five counties within the ~~delta~~ Delta whose
 30 supervisorial district is within the primary zone shall be appointed
 31 by the board of supervisors of ~~the county~~ each of those respective
 32 counties.

33 (b) (1) ~~Three~~ Two elected city council members shall be selected
 34 and appointed by city selection committees, from ~~regional and~~
 35 ~~area councils of government~~ the appropriate regions specified in
 36 subparagraphs (A) and (B), one in each of the following areas:

37 (A) ~~One from the north delta, consisting of the Counties of Yolo~~
 38 ~~and Sacramento.~~

39 (B)

1 (A) One from the south-~~delta~~ *Delta*, consisting of the County of
2 San Joaquin.

3 ~~(C)~~

4 (B) One from the west-~~delta~~ *Delta*, ~~consisting of~~ *from either* the
5 ~~Counties~~ *County* of Contra Costa ~~and~~ *or the County of Solano*, on
6 *a rotating basis*.

7 (2) *One elected city council member shall be selected and*
8 *appointed by city selection committees, from regional and area*
9 *councils of government from the north Delta, consisting of the*
10 *Counties of Yolo and Sacramento.*

11 ~~(2)~~

12 (3) *A city council member appointed pursuant to this*
13 *subdivision may select a designee for purposes of* ~~paragraph (1)~~
14 *this subdivision.*

15 (4) *Notwithstanding Section 29736, the term of office of the*
16 *members selected pursuant to this subdivision shall be two years.*

17 (c) ~~(1)~~ *One member each from the board of directors of five*
18 *three different reclamation districts that are located within the*
19 *primary zone who are residents of the* ~~delta~~ *Delta*, and who are
20 *elected by the trustees of* ~~reclamations~~ *reclamation districts within*
21 ~~the following areas:~~ *pursuant to paragraphs (1), (2), and (3). Each*
22 *reclamation district may nominate one director to be a member.*
23 *The member from an area described in paragraph (1), (2), or (3)*
24 *shall be selected from among the nominees by a majority vote of*
25 *the reclamation districts in that area. A member selected pursuant*
26 *to this subdivision may select a designee for this purpose. For the*
27 *purposes of this section, each reclamation district shall have one*
28 *vote. Reclamation district members shall consist of the following:*

29 ~~(A) Two members~~

30 (1) *One member from the area of the North Delta Water Agency*
31 *as described in Section 9.1 of the North Delta Water Agency Act*
32 *(Chapter 283 of the Statutes of 1973),* ~~provided at least one member~~
33 ~~is also a member of the Delta Citizens Municipal Advisory Council.~~

34 ~~(B)~~

35 (2) *One member from an area including the west-~~delta~~ Delta*
36 *consisting of the area of Contra Costa County within the* ~~delta~~
37 *Delta and within the Central Delta Water Agency as described in*
38 *Section 9.1 of the Central Delta Water Agency Act (Chapter 1133*
39 *of the Statutes of 1973).*

- 1 ~~(C) One member from the area of the Central Delta Water~~
- 2 ~~Agency as described in Section 9.1 of the Central Delta Water~~
- 3 ~~Agency Act (Chapter 1133 of the Statutes of 1973).~~
- 4 ~~(D)~~
- 5 (3) One member from the area of the South Delta Water Agency
- 6 as described in Section 9.1 of the South Delta Water Agency Act
- 7 (Chapter 1089 of the Statutes of 1973).
- 8 ~~(2) Each reclamation district may nominate one director to be~~
- 9 ~~a member. The member from an area shall be selected from among~~
- 10 ~~the nominees by a majority vote of the reclamation districts in that~~
- 11 ~~area. The member may select a designee for this purpose. For~~
- 12 ~~purposes of this section, each reclamation district shall have one~~
- 13 ~~vote. The north delta area shall conduct separate votes to select~~
- 14 ~~each of its two members.~~
- 15 ~~(d) The Director of Parks and Recreation, or the director's sole~~
- 16 ~~designee.~~
- 17 ~~(e) The Director of Fish and Game, or the director's sole~~
- 18 ~~designee.~~
- 19 ~~(f)~~
- 20 (d) The Secretary of Food and Agriculture, or the secretary's
- 21 sole designee.
- 22 ~~(g)~~
- 23 (e) The executive officer of the State Lands Commission, or the
- 24 executive officer's sole designee.
- 25 ~~(h) The Director of Boating and Waterways, or the director's~~
- 26 ~~sole designee.~~
- 27 ~~(i) The Director of Water Resources, or the director's sole~~
- 28 ~~designee.~~
- 29 ~~(j) The public member of the California Bay-Delta Authority~~
- 30 ~~who represents the delta region or his or her designee.~~
- 31 ~~(k) (1) The Governor shall appoint three members and three~~
- 32 ~~alternates from the general public who are delta residents or delta~~
- 33 ~~landowners, as follows:~~
- 34 ~~(A) One member and one alternate shall represent the interests~~
- 35 ~~of production agriculture with a background in promoting the~~
- 36 ~~agricultural viability of delta farming.~~
- 37 ~~(B) One member and one alternate shall represent the interests~~
- 38 ~~of conservation of wildlife and habitat resources of the delta region~~
- 39 ~~and ecosystem.~~

1 ~~(C) One member and one alternate shall represent the interests~~
2 ~~of outdoor recreational opportunities, including, but not limited~~
3 ~~to, hunting and fishing.~~

4 ~~(2) An alternate may serve in the absence of a member.~~

5 ~~(f) The Secretary of the Natural Resources Agency, or his or~~
6 ~~her sole designee.~~

7 ~~(g) The Secretary of Business, Transportation and Housing, or~~
8 ~~his or her sole designee.~~

9 *SEC. 10. Section 29735.1 of the Public Resources Code is*
10 *amended to read:*

11 29735.1. (a) A member of the commission described in
12 subdivision (a), ~~(b), (c), or (j)~~ of Section 29735 may, subject to
13 the confirmation of his or her appointing power, appoint an
14 alternate to represent him or her at a commission meeting. An
15 alternate may serve prior to confirmation for a period not to exceed
16 90 days from the date of appointment, unless and until confirmation
17 is denied.

18 (b) The alternate shall serve at the pleasure of the member who
19 appoints him or her and shall have all of the powers and duties of
20 a member of the commission, except that the alternate shall only
21 participate and vote in a meeting in the absence of the member
22 who appoints him or her. All provisions of law relating to conflicts
23 of interest that are applicable to a member shall apply to an
24 alternate. ~~Whenever~~ *If* a member has, or is known to have, a
25 conflict of interest on any matter, the member's alternate is
26 ineligible to vote on that matter.

27 *SEC. 11. Section 29736 of the Public Resources Code is*
28 *repealed.*

29 ~~29736. The term of office of the members of the commission~~
30 ~~shall be for four years, and a member may serve for one or more~~
31 ~~consecutive terms.~~

32 *SEC. 12. Section 29736 is added to the Public Resources Code,*
33 *to read:*

34 29736. *The appointed members of the commission shall serve*
35 *at the pleasure of their appointing entities.*

36 *SEC. 13. Section 29738 of the Public Resources Code is*
37 *amended to read:*

38 29738. ~~The position office of a an appointed member of the~~
39 ~~commission shall be considered~~ *is vacated upon the loss of any*
40 *qualification required for appointment, and in that event the*

1 appointing authority shall appoint a successor within 30 days of
2 the occurrence of the vacancy. ~~Upon the occurrence of the first~~
3 ~~vacancy among any of the members listed in subdivision (d), (e),~~
4 ~~(f), (g), (h), or (i) of Section 29735, the Director of Conservation~~
5 ~~or the director's designee shall serve as the successor member.~~

6 *SEC. 14. Section 29739 of the Public Resources Code is*
7 *repealed.*

8 ~~29739. The commission shall elect from its own members a~~
9 ~~chairperson and vice chairperson whose terms of office shall be~~
10 ~~two years, and who may be reelected. If a vacancy occurs in either~~
11 ~~office, the commission shall fill the vacancy for the unexpired~~
12 ~~term.~~

13 *SEC. 15. Section 29739 is added to the Public Resources Code,*
14 *to read:*

15 *29739. (a) The commission, during the first meeting of the*
16 *commission after January 1, 2010, shall elect from among the*
17 *members identified in subdivision (a) of Section 29735 a*
18 *chairperson who shall serve for one year.*

19 *(b) Subsequent chairpersons shall serve for two years and shall*
20 *be elected from among the members identified in subdivision (a)*
21 *of Section 29735.*

22 *(c) The chairperson shall serve as a voting member of the Delta*
23 *Stewardship Council.*

24 *SEC. 16. Section 29741 of the Public Resources Code is*
25 *amended to read:*

26 *29741. The time and place of the first meeting of the*
27 *commission, on and after January 1, 2010, shall be prescribed by*
28 *the Governor, but in no event shall it be scheduled for a date later*
29 *than January 31, 1993 2010. All meetings after the first meeting*
30 *shall be held in a city within the ~~delta~~ Delta.*

31 *SEC. 17. Section 29751 of the Public Resources Code is*
32 *amended to read:*

33 *29751. A majority of the voting members of the commission*
34 *shall constitute a quorum for the transaction of the business of the*
35 *commission. A majority vote of the voting ~~members present~~*
36 *membership shall be required to take action with respect to any*
37 *matter unless otherwise specified in this division. The vote of each*
38 *member shall be individually recorded.*

39 *SEC. 18. Section 29752 of the Public Resources Code is*
40 *amended to read:*

1 29752. The commission shall adopt its own rules, regulations,
2 and procedures necessary for its organization and operation, *and*
3 *shall conduct its meetings in compliance with the Bagley-Keene*
4 *Open Meeting Act (Article 9 (commencing with Section 11120) of*
5 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
6 *Code).*

7 *SEC. 19. Section 29753 of the Public Resources Code is*
8 *repealed.*

9 ~~29753. The commission shall appoint agricultural,~~
10 ~~environmental, and recreational advisory committees for the~~
11 ~~purpose of providing the commission with timely comments,~~
12 ~~advice, and information. The commission may appoint committees~~
13 ~~from its membership or may appoint additional advisory~~
14 ~~committees from members of other interested public agencies and~~
15 ~~private groups. The commission shall seek advice and~~
16 ~~recommendations from advisory committees appointed by local~~
17 ~~government which are involved in subject matters affecting the~~
18 ~~delta.~~

19 *SEC. 20. Section 29753 is added to the Public Resources Code,*
20 *to read:*

21 29753. (a) *The commission shall appoint at least one advisory*
22 *committee to provide recommendations regarding the diverse*
23 *interests within the Delta. At a minimum, the advisory committees*
24 *shall include representatives of state agencies and other*
25 *stakeholders with interests in the Delta's ecosystem, water supply,*
26 *and socioeconomic sustainability, including, but not limited to, its*
27 *recreational, agricultural, flood control, environmental, and water*
28 *resources, and state, local, and utility infrastructure. The*
29 *commission shall encourage participation of various federal*
30 *agencies, including the United States Bureau of Reclamation, the*
31 *United States Fish and Wildlife Service, the United States Army*
32 *Corps of Engineers, and others as appropriate.*

33 (b) *The commission may appoint committees from its*
34 *membership or may appoint additional advisory committees from*
35 *members of other interested public agencies and private groups.*

36 (c) *The commission shall seek advice and recommendations*
37 *from advisory committees appointed by local government that are*
38 *involved in subject matters affecting the Delta.*

39 *SEC. 21. Section 29754 of the Public Resources Code is*
40 *amended to read:*

1 29754. The commission shall establish and maintain an office
2 within the ~~delta~~ *Delta or the City of Rio Vista*, and for this purpose
3 the commission may rent or own property and equipment. Any
4 rule, regulation, procedure, plan, or other record of the commission
5 which is of such a nature as to constitute a public record under
6 state law shall be available for inspection and copying ~~during~~
7 ~~regular office hours~~ pursuant to the California Public Records Act
8 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
9 Title 1 of the Government Code).

10 SEC. 22. Section 29756.5 of the Public Resources Code is
11 amended to read:

12 29756.5. The commission may act as the facilitating agency
13 for the implementation of any joint habitat restoration or
14 enhancement programs located within the primary zone of the
15 ~~delta~~ *Delta, including, but not limited to, a national heritage area*
16 *designation in the Delta.*

17 SEC. 23. Section 29759 is added to the Public Resources Code,
18 to read:

19 29759. (a) Not later than July 1, 2011, the commission shall
20 prepare and adopt, by a majority vote of the membership of the
21 commission, an economic sustainability plan. The economic
22 sustainability plan shall include information and recommendations
23 that inform the Delta Stewardship Council's policies regarding
24 the socioeconomic sustainability of the Delta region.

25 (b) The economic sustainability plan shall include, but not be
26 limited to, all of the following:

27 (1) Public safety recommendations, such as flood protection
28 recommendations.

29 (2) The economic goals, policies, and objectives in local general
30 plans and other local economic efforts, including recommendations
31 on continued socioeconomic sustainability of agriculture and its
32 infrastructure and legacy communities in the Delta.

33 (3) Comments and recommendations to the Department of Water
34 Resources concerning its periodic update of the flood management
35 plan for the Delta.

36 (4) Identification of ways to encourage recreational investment
37 along the key river corridors, as appropriate.

38 SEC. 24. Section 29761 of the Public Resources Code is
39 repealed.

1 ~~29761. The Director of the Office of Planning and Research~~
2 ~~shall submit comments and recommendations on the resource~~
3 ~~management plan for the commission's consideration, prior to the~~
4 ~~plan's adoption.~~

5 *SEC. 25. Section 29761 is added to the Public Resources Code,*
6 *to read:*

7 *29761. The commission shall adopt, by a majority vote, the*
8 *economic sustainability plan and each plan update after at least*
9 *three public hearings, with at least one hearing held in a*
10 *community in the north Delta, one hearing in the south Delta, and*
11 *one hearing in the west Delta.*

12 *SEC. 26. Section 29761.5 of the Public Resources Code is*
13 *repealed.*

14 ~~29761.5. Not later than January 7, 1995, the commission shall~~
15 ~~transmit copies of the resource management plan to the Governor.~~
16 ~~Copies of the resource management plan shall be made available,~~
17 ~~upon request, to Members of the Legislature.~~

18 *SEC. 27. Section 29761.5 is added to the Public Resources*
19 *Code, to read:*

20 *29761.5. (a) The commission shall review, and, as determined*
21 *to be necessary, amend the economic sustainability plan every five*
22 *years on or before December 31 in years ending in six or one.*

23 *(b) The commission shall transmit copies of the economic*
24 *sustainability plan and any subsequent amendments to the*
25 *Governor; Legislature, each local government as defined in Section*
26 *29725, and Delta Stewardship Council within 60 days of adoption*
27 *or amendment. Within 180 days of the commission's adoption or*
28 *amendment of the economic sustainability plan, the Delta*
29 *Stewardship Council shall review the economic sustainability plan*
30 *for consistency with the Delta Plan.*

31 *SEC. 28. Section 29762 of the Public Resources Code is*
32 *repealed.*

33 ~~29762. The commission shall adopt, by a majority vote of the~~
34 ~~membership of the commission, the resource management plan~~
35 ~~after at least three public hearings, with at least one hearing held~~
36 ~~in a city in the north delta, the south delta, and the west delta.~~

37 *SEC. 29. Section 29763 of the Public Resources Code is*
38 *amended to read:*

39 *29763. Within 180 days from the date of the adoption of the*
40 *resource resources management plan or any amendments, changes,*

1 or updates, to the ~~resource~~ *resources* management plan by the
 2 commission, ~~all each local governments government~~ shall submit
 3 to the commission proposed amendments ~~that will cause their~~
 4 ~~general plans to be~~ *to its general plan that are intended to make*
 5 *the general plan* consistent with the ~~criteria in Section 29763.5~~
 6 *resources management plan* with respect to land located within
 7 the primary zone.

8 *SEC. 30. Section 29764 of the Public Resources Code is*
 9 *repealed.*

10 ~~29764. This division does not confer any permitting authority~~
 11 ~~upon the commission or require any local government to conform~~
 12 ~~their general plan, or land use entitlement decisions, to the resource~~
 13 ~~management plan, except with regard to lands within the primary~~
 14 ~~zone. The resource management plan does not preempt local~~
 15 ~~government general plans for lands within the secondary zone.~~

16 *SEC. 31. Section 29764 is added to the Public Resources Code,*
 17 *to read:*

18 *29764. Land use authority granted to the commission by this*
 19 *division is limited to the primary zone, and shall not preempt local*
 20 *government general plans for lands within the secondary zone.*

21 *SEC. 32. Section 29771 of the Public Resources Code is*
 22 *amended to read:*

23 *29771. After a hearing on an appealed action pursuant to*
 24 *Section 29770, the commission shall either deny the appeal or*
 25 *remand the matter to the local government or local agency for*
 26 *reconsideration, after making specific findings. Upon remand, the*
 27 *local government or local agency shall modify the appealed action*
 28 *and resubmit the matter for review to the commission. A proposed*
 29 *action appealed pursuant to this section shall not be effective until*
 30 *the commission has adopted written findings, based on substantial*
 31 *evidence in the record, that the action is consistent with the*
 32 ~~resource~~ *resources* management plan, the approved portions of
 33 local government general plans that implement the ~~resource~~
 34 *resources* management plan, and this division.

35 *SEC. 33. Section 29773 is added to the Public Resources Code,*
 36 *to read:*

37 *29773. (a) The commission may review and provide comments*
 38 *and recommendations to the Delta Stewardship Council on any*
 39 *significant project or proposed project within the scope of the*
 40 *Delta Plan, including, but not limited to, actions by state and*

1 *federal agencies, that may affect the unique cultural, recreational,*
2 *and agricultural values within the primary and secondary zones.*
3 *Review and comment authority granted to the commission shall*
4 *include, but is not limited to, all of the following:*

5 *(1) Identification of impacts to the cultural, recreational, and*
6 *agricultural values of the Delta.*

7 *(2) Recommendations for actions that may avoid, reduce, or*
8 *mitigate impacts to the cultural, recreational, and agricultural*
9 *values of the Delta.*

10 *(3) Review of consistency of the project or proposed project*
11 *with the resources management plan and the Delta Plan.*

12 *(4) Identification and recommendation of methods to address*
13 *Delta community concerns regarding large-scale habitat plan*
14 *development and implementation.*

15 *(b) The council shall take into consideration the*
16 *recommendations of the commission, including the*
17 *recommendations included in the economic sustainability plan. If*
18 *the council, in its discretion, determines that a recommendation*
19 *of the commission is feasible and consistent with the objectives of*
20 *the Delta Plan and the purposes of this division, the council shall*
21 *adopt the recommendation.*

22 *SEC. 34. Section 29773.5 is added to the Public Resources*
23 *Code, to read:*

24 *29773.5. On or before July 1, 2010, the commission shall*
25 *prepare and submit to the Legislature recommendations regarding*
26 *the potential expansion of or change to the primary zone or the*
27 *Delta. The commission shall consider recommendations on the*
28 *status of all of the following areas:*

29 *(a) Rio Vista.*

30 *(b) Isleton.*

31 *(c) Bethel Island.*

32 *(d) Brannan-Andrus Island.*

33 *(e) Cosumnes/Mokelumne floodway.*

34 *(f) The San Joaquin/South Delta lowlands.*

35 *SEC. 35. Section 29778.5 is added to the Public Resources*
36 *Code, to read:*

37 *29778.5. The Delta Investment Fund is hereby created in the*
38 *State Treasury. Any funds within the Delta Investment Fund shall*
39 *be available, upon appropriation by the Legislature, to the*
40 *commission for the implementation of the regional economic*

1 sustainability plan, developed pursuant to Section 29759, for the
2 purposes of enhancing Delta communities. The Delta Investment
3 Fund may receive funds from federal, state, local, and private
4 sources.

5 SEC. 36. Section 29780 of the Public Resources Code is
6 amended to read:

7 29780. On January 1 of each year, the commission shall submit
8 to the Governor and the Legislature a report describing the progress
9 that has been made in achieving the objectives of this division.
10 The report shall include, but *need* not be limited to, all of the
11 following information:

12 ~~(a) An evaluation of the effectiveness of the resource~~
13 ~~management plan in preserving agricultural lands, restoring delta~~
14 ~~habitat, improving levee protection and water quality, providing~~
15 ~~increased public access and recreational opportunities, and in~~
16 ~~undertaking other functions prescribed in this division.~~

17 (a) An evaluation of the effectiveness of the commission in
18 undertaking its functions prescribed in this division, including,
19 but not limited to, its mandates as follows:

20 (1) Determining the consistency of local general plans with the
21 Delta Plan.

22 (2) Outcomes of appealed local land use decisions pursuant to
23 Sections 29770 and 29771.

24 (3) Outcomes of reviews initiated by the commission.

25 (4) Facilitating regional economic sustainability.

26 (5) Supporting other regional activities for the enhancement of
27 Delta communities.

28 (b) An update of the ~~resource management~~ economic
29 sustainability plan, using baseline conditions set forth in the
30 original ~~resource management~~ economic sustainability plan.

31 (c) The status of the environmental thresholds established by
32 the commission in the original resource management plan.

33 SEC. 37. Division 22.3 (commencing with Section 32300) is
34 added to the Public Resources Code, to read:

1 *and is traversed by energy, communications, and transportation*
 2 *facilities vital to the economic health of California.*

3 *(i) A Sacramento-San Joaquin Delta Conservancy can support*
 4 *efforts that advance both environmental protection and the*
 5 *economic well-being of Delta residents in a complementary*
 6 *manner, including all of the following:*

7 *(1) Protect and enhance habitat and habitat restoration.*

8 *(2) Protect and preserve Delta agriculture and working*
 9 *landscapes.*

10 *(3) Provide increased opportunities for tourism and recreation.*

11 *(4) Promote Delta legacy communities and economic vitality*
 12 *in the Delta in coordination with the Delta Protection Commission.*

13 *(5) Increase the resilience of the Delta to the effects of natural*
 14 *disasters such as floods and earthquakes, in coordination with the*
 15 *Delta Protection Commission.*

16 *(6) Protect and improve water quality.*

17 *(7) Assist the Delta regional economy through the operation of*
 18 *the conservancy's program.*

19 *(8) Identify priority projects and initiatives for which funding*
 20 *is needed.*

21 *(9) Protect, conserve, and restore the region's physical,*
 22 *agricultural, cultural, historical, and living resources.*

23 *(10) Assist local entities in the implementation of their habitat*
 24 *conservation plans (HCPs) and natural community conservation*
 25 *plans (NCCPs).*

26 *(11) Facilitate take protection and safe harbor agreements*
 27 *under the federal Endangered Species Act of 1973 (16 U.S.C. Sec.*
 28 *1531 et seq.) and the California Endangered Species Act (Chapter*
 29 *1.5 (commencing with Section 2050) of Division 3 of the Fish and*
 30 *Game Code) for adjacent landowners and local public agencies.*

31 *(12) Promote environmental education.*

32

33 *CHAPTER 2. DEFINITIONS*

34

35 *32310. For the purposes of this division, the following terms*
 36 *have the following meanings:*

37 *(a) "Board" means the governing board of the Sacramento-San*
 38 *Joaquin Delta Conservancy.*

39 *(b) "Conservancy" means the Sacramento-San Joaquin Delta*
 40 *Conservancy.*

1 (c) “Delta” means the Sacramento-San Joaquin Delta as defined
2 in Section 12220 of the Water Code.

3 (d) “Fund” means the Sacramento-San Joaquin Delta
4 Conservancy Fund created pursuant to Section 32360.

5 (e) “Local public agency” means a city, county, special district,
6 or joint powers authority.

7 (f) “Nonprofit organization” means a private, nonprofit
8 organization that qualifies for exempt status under Section
9 501(c)(3) of Title 26 of the United States Code and that has among
10 its principal charitable purposes preservation of land for scientific,
11 recreational, scenic, or open-space opportunities, protection of
12 the natural environment, preservation or enhancement of wildlife,
13 preservation of cultural and historical resources, or efforts to
14 provide for the enjoyment of public lands.

15 (g) “Suisun Marsh” means the area defined in Section 29101
16 and protected by Division 19 (commencing with Section 29000).

17

18 *CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY*

19

20 32320. There is in the Natural Resources Agency the
21 Sacramento-San Joaquin Delta Conservancy, which is created as
22 a state agency to work in collaboration and cooperation with local
23 governments and interested parties.

24 32322. (a) The conservancy shall act as a primary state agency
25 to implement ecosystem restoration in the Delta.

26 (b) The conservancy shall support efforts that advance
27 environmental protection and the economic well-being of Delta
28 residents, including all of the following:

29 (1) Protect and enhance habitat and habitat restoration.

30 (2) Protect and preserve Delta agriculture and working
31 landscapes.

32 (3) Provide increased opportunities for tourism and recreation
33 in the Delta.

34 (4) Promote Delta legacy communities and economic vitality
35 in the Delta, in coordination with the Delta Protection Commission.

36 (5) Increase the resilience of the Delta to the effects of natural
37 disasters such as floods and earthquakes, in coordination with the
38 Delta Protection Commission.

39 (6) Protect and improve water quality.

1 (7) Assist the Delta regional economy through the operation of
2 the conservancy's program.

3 (8) Identify priority projects and initiatives for which funding
4 is needed.

5 (9) Protect, conserve, and restore the region's physical,
6 agricultural, cultural, historical, and living resources.

7 (10) Assist local entities in the implementation of their habitat
8 conservation plans (HCPs) and natural community conservation
9 plans (NCCPs).

10 (11) Facilitate take protection and safe harbor agreements
11 under the federal Endangered Species Act of 1973 (16 U.S.C. Sec.
12 1531 et seq.), the California Endangered Species Act (Chapter 1.5
13 commencing with Section 2050) of Division 3 of the Fish and
14 Game Code), and the Natural Community Conservation Planning
15 Act (Chapter 10 commencing with Section 2800) of Division 3 of
16 the Fish and Game Code) for adjacent landowners and local public
17 agencies.

18 (12) Promote environmental education through grant funding.

19 (c) When implementing subdivision (b), the conservancy shall
20 undertake efforts to enhance public use and enjoyment of lands
21 owned by the public.

22

23 CHAPTER 4. GOVERNING BOARD

24

25 32330. The board shall consist of 11 voting members and two
26 nonvoting members, appointed or designated as follows:

27 (a) The 11 voting members of the board shall consist of all of
28 the following:

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

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

32 (3) One member of the board or a designee who is appointed
33 by the Contra Costa County Board of Supervisors, who is a resident
34 of that county.

35 (4) One member of the board or a designee who is appointed
36 by the Sacramento County Board of Supervisors, who is a resident
37 of that county.

38 (5) One member of the board or a designee who is appointed
39 by the San Joaquin County Board of Supervisors, who is a resident
40 of that county.

- 1 (6) *One member of the board or a designee who is appointed*
2 *by the Solano County Board of Supervisors, who is a resident of*
3 *that county.*
- 4 (7) *One member of the board or a designee who is appointed*
5 *by the Yolo County Board of Supervisors, who is a resident of that*
6 *county.*
- 7 (8) *Two public members appointed by the Governor, subject to*
8 *confirmation by the Senate.*
- 9 (9) *One public member appointed by the Senate Committee on*
10 *Rules.*
- 11 (10) *One public member appointed by the Speaker of the*
12 *Assembly.*
- 13 (b) *The two nonvoting members shall consist of a Member of*
14 *the Senate, appointed by the Senate Committee on Rules, and a*
15 *Member of the Assembly, appointed by the Speaker of the Assembly.*
16 *The members appointed under this subdivision shall meet with the*
17 *conservancy and participate in its activities to the extent that this*
18 *participation is not incompatible with their positions as Members*
19 *of the Legislature. The appointed members shall represent a district*
20 *that encompasses a portion of the Delta.*
- 21 (c) *Ten liaison advisers who shall serve in an advisory,*
22 *nonvoting capacity shall consist of all of the following:*
- 23 (1) *One representative of the United States Fish and Wildlife*
24 *Service, designated by the United States Secretary of the Interior.*
- 25 (2) *One representative of the United States National Marine*
26 *Fisheries Service, designated by the United States Secretary of the*
27 *Interior.*
- 28 (3) *One representative of the United States Bureau of*
29 *Reclamation, designated by the United States Secretary of the*
30 *Interior.*
- 31 (4) *One representative of the United States Army Corps of*
32 *Engineers, designated by the Commanding Officer, United States*
33 *Army Corps of Engineers, South Pacific Division.*
- 34 (5) *A designee of the San Francisco Bay Conservation and*
35 *Development Commission for coordination purposes.*
- 36 (6) *A designee of the State Coastal Conservancy for*
37 *coordination purposes.*
- 38 (7) *A designee of the Suisun Resource Conservation District*
39 *for coordination purposes.*
- 40 (8) *A designee of the Central Valley Flood Protection Board.*

1 (9) A designee of the Yolo Basin Foundation.

2 (10) A designee of the Delta Protection Commission.

3 (d) The public members appointed by the Governor shall serve
4 for a term of four years, with a two-term limit.

5 (e) The locally appointed members and alternates shall serve
6 at the pleasure of the appointing board of supervisors.

7 (f) The public members appointed by the Senate Committee on
8 Rules or the Speaker of the Assembly shall serve for a term of four
9 years, with a two-term limit.

10 (g) The Members of the Senate and Assembly shall serve at the
11 pleasure of the appointing body.

12 (h) Alternates may be appointed by the county boards of
13 supervisors.

14 32332. Annually, the voting members of the board shall elect
15 from among the voting members a chairperson and vice
16 chairperson, and other officers as necessary. If the office of the
17 chairperson or vice chairperson becomes vacant, a new
18 chairperson or vice chairperson shall be elected by the voting
19 members of the board to serve for the remainder of the term. The
20 chairperson shall be selected from among the members specified
21 in paragraphs (3) to (7), inclusive, of subdivision (a) of Section
22 32330.

23 32334. A majority of the voting members shall constitute a
24 quorum for the transaction of the business of the conservancy. The
25 board shall not transact the business of the conservancy if a
26 quorum is not present at the time a vote is taken. A decision of the
27 board requires an affirmative vote of six of the voting membership,
28 and the vote is binding with respect to all matters acted on by the
29 conservancy.

30 32336. The board shall adopt rules and procedures for the
31 conduct of business by the conservancy.

32 32338. The board may establish advisory boards or committees,
33 hold community meetings, and engage in public outreach.

34 32340. The board shall establish and maintain a headquarters
35 office within the Delta. The conservancy may rent or own real and
36 personal property and equipment pursuant to applicable statutes
37 and regulations.

38 32342. The board shall determine the qualifications of, and
39 shall appoint, an executive officer of the conservancy, who shall
40 be exempt from civil service. The board shall employ other staff

1 *as necessary to execute the powers and functions provided for in*
2 *this division.*

3 32344. *The board may enter into contracts with private entities*
4 *and public agencies to procure consulting and other services*
5 *necessary to achieve the purposes of this division.*

6 32346. *The conservancy's expenses for support and*
7 *administration may be paid from the conservancy's operating*
8 *budget and any other funding sources available to the conservancy.*

9 32348. *The board shall conduct business in accordance with*
10 *the Bagley-Keene Open Meeting Act (Article 9 (commencing with*
11 *Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of*
12 *the Government Code).*

13 32350. *The board shall hold its regular meetings within the*
14 *Delta or the City of Rio Vista.*

15

16 *CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS*

17

18 32360. (a) *Except as specified in Section 32360.5, the*
19 *jurisdiction and activities of the conservancy are limited to the*
20 *Delta and Suisun Marsh.*

21 (b) (1) *The Sacramento-San Joaquin Delta Conservancy Fund*
22 *is hereby created in the State Treasury. Moneys in the fund shall*
23 *be available, upon appropriation by the Legislature, only for the*
24 *purposes of this division.*

25 (2) *Funds provided for ecosystem restoration and enhancement*
26 *shall be available for ecosystem restoration projects consistent*
27 *with the conservancy's strategic plan adopted pursuant to Section*
28 *32376.*

29 (3) *Funds may be allocated to a separate program within the*
30 *conservancy for economic sustainability in the Delta. The economic*
31 *sustainability plan adopted pursuant to Section 29759 shall be the*
32 *basis for the program. Funds provided to the conservancy to*
33 *implement ecosystem restoration projects pursuant to the Bay*
34 *Delta Conservation Plan shall only be used for ecosystem*
35 *restoration purposes.*

36 32360.5. *In furtherance of the conservancy's role in*
37 *implementing the Delta Plan, the conservancy may take or fund*
38 *an action outside the Delta and Suisun Marsh if the board makes*
39 *all of the following findings:*

1 (a) The project implements the ecosystem goals of the Delta
2 Plan.

3 (b) The project is consistent with the requirements of any
4 applicable state and federal permits.

5 (c) The conservancy has given notice to and reviewed any
6 comments received from affected local jurisdictions and the Delta
7 Protection Commission.

8 (d) The conservancy has given notice to and reviewed any
9 comments received from any state conservancy where the project
10 is located.

11 (e) The project will provide significant benefits to the Delta.

12 32362. The conservancy may engage in partnerships with
13 nonprofit organizations, local public agencies, and landowners.

14 32363. In implementing this division, the conservancy shall
15 cooperate and consult with the city or county in which a grant is
16 proposed to be expended or an interest in real property is proposed
17 to be acquired, and shall, as necessary or appropriate, coordinate
18 its efforts with other state agencies, in cooperation with the
19 Secretary of the Natural Resources Agency. The conservancy shall,
20 as necessary or appropriate, cooperate and consult with a public
21 water system, levee, flood control, or drainage agency that owns
22 or operates facilities, including lands appurtenant thereto, where
23 a grant is proposed to be expended or an interest in land is
24 proposed to be acquired.

25 32364. (a) The conservancy may require a grantee to enter
26 into an agreement with the conservancy on terms and conditions
27 specified by the conservancy.

28 (b) The conservancy may require a cost-share or local funding
29 requirement for a grant. The conservancy may make that cost-share
30 or local funding requirement contingent upon the total amount of
31 funding available, the fiscal resources of the applicant, or urgency
32 of the project. The conservancy may waive cost-share requirements.

33 (c) The conservancy may fund or award grants for plans and
34 feasibility studies consistent with its strategic plan or the Delta
35 Plan.

36 (d) The conservancy may seek repayment or reimbursement of
37 funds granted on terms and conditions it deems appropriate. The
38 proceeds of repayment shall be deposited in the fund.

39 (e) The conservancy may require any funds that exceed the costs
40 of eligible or approved projects or of acquisition to be returned

1 to the conservancy, to be available for expenditure when
2 appropriated by the Legislature.

3 32364.5. (a) The conservancy may provide grants and loans
4 to state agencies, local public agencies, and nonprofit
5 organizations to further the goals of the conservancy.

6 (b) An entity applying for a grant from the conservancy to
7 acquire an interest in real property shall specify all of the following
8 in the grant application:

9 (1) The intended use of the property.

10 (2) The manner in which the land will be managed.

11 (3) How the cost of ongoing operations, maintenance, and
12 management will be provided, including an analysis of the
13 maintaining entity's financial capacity to support those ongoing
14 costs.

15 (4) Grantees shall demonstrate, where applicable, how they
16 will provide payments in lieu of taxes, assessments, or charges
17 otherwise due to local government.

18 32365. The conservancy may sue and be sued.

19 32366. (a) The conservancy may acquire from willing sellers
20 or transferors interests in real property and improve, lease, or
21 transfer interests in real property, in order to carry out the
22 purposes of this division.

23 (b) The conservancy shall use conservation easements to
24 accomplish ecosystem restoration whenever feasible.

25 32368. The conservancy may enter into an agreement with a
26 public agency, nonprofit organization, or private entity for the
27 construction, management, or maintenance of facilities authorized
28 by the conservancy.

29 32370. The conservancy shall not exercise the power of eminent
30 domain.

31 32372. (a) The conservancy may pursue and accept funds from
32 various sources, including, but not limited to, federal, state, and
33 local funds or grants, gifts, donations, bequests, devises,
34 subventions, grants, rents, royalties, or other assistance and funds
35 from public and private sources.

36 (b) The conservancy may accept fees levied by others.

37 (c) The conservancy may create and manage endowments.

38 (d) All funds received by the conservancy shall be deposited in
39 the fund for expenditure for the purposes of this division.

1 32376. *Within two years of hiring an executive officer, the*
2 *board shall prepare and adopt a strategic plan to achieve the goals*
3 *of the conservancy. The plan shall describe its interaction with*
4 *local, regional, state, and federal land use, recreation, water and*
5 *flood management, and habitat conservation and protection efforts*
6 *within and adjacent to the Delta. The strategic plan shall establish*
7 *priorities and criteria for projects and programs, based upon an*
8 *assessment of program requirements, institutional capabilities,*
9 *and funding needs throughout the Delta. The strategic plan shall*
10 *be consistent with the Delta Plan, the Delta Protection*
11 *Commission's resources management plan, the Central Valley*
12 *Flood Protection Plan, the Suisun Marsh Preservation Act of 1977*
13 *(Division 19 (commencing with Section 29000)), and the Habitat*
14 *Management, Preservation and Restoration Plan for the Suisun*
15 *Marsh.*

16 32378. (a) *The conservancy may expend funds and award*
17 *grants and loans to facilitate collaborative planning efforts and*
18 *to develop projects and programs that are designed to further the*
19 *purposes of this division.*

20 (b) *The conservancy may provide and make available technical*
21 *information, expertise, and other nonfinancial assistance to public*
22 *agencies, nonprofit organizations, and tribal organizations, to*
23 *support program and project development and implementation.*

24 32380. *The conservancy may acquire water or water rights to*
25 *support the goals of the conservancy.*

26 32381. *This division does not grant to the conservancy any of*
27 *the following:*

28 (a) *The power of a city or county to regulate land use.*

29 (b) *The power to regulate any activities on land, except as the*
30 *owner of an interest in the land, or pursuant to an agreement with,*
31 *or a license or grant of management authority from, the owner of*
32 *an interest in the land.*

33 (c) *The power over water rights held by others.*

34 SEC. 38. *Division 26.4 (commencing with Section 79400) of*
35 *the Water Code is repealed.*

36 SEC. 39. *Division 35 (commencing with Section 85000) is*
37 *added to the Water Code, to read:*

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

PART 1. GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

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

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

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

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

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

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

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

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending

1 *on the season and the amount of precipitation in any one year,*
 2 *and the species that comprised the Delta ecosystem had evolved*
 3 *and adapted to this unique, dynamic system.*

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

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

21 *85004. The Legislature finds and declares all of the following:*

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

27 *(b) Providing a more reliable water supply for the state involves*
 28 *implementation of water use efficiency and conservation projects,*
 29 *wastewater reclamation projects, desalination, and new and*
 30 *improved infrastructure, including water storage and Delta*
 31 *conveyance facilities.*

32

33

CHAPTER 2. DELTA POLICY

34

35 *85020. The policy of the State of California is to achieve the*
 36 *following objectives that the Legislature declares are inherent in*
 37 *the coequal goals for management of the Delta:*

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

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

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

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

7 (e) *Improve water quality to protect human health and the*
8 *environment consistent with achieving water quality objectives in*
9 *the Delta.*

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

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

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

18 85021. *The policy of the State of California is to reduce*
19 *reliance on the Delta in meeting California’s future water supply*
20 *needs through a statewide strategy of investing in improved*
21 *regional supplies, conservation, and water use efficiency. Each*
22 *region that depends on water from the Delta watershed shall*
23 *improve its regional self-reliance for water through investment in*
24 *water use efficiency, water recycling, advanced water technologies,*
25 *local and regional water supply projects, and improved regional*
26 *coordination of local and regional water supply efforts.*

27 85022. (a) *It is the intent of the Legislature that state and local*
28 *land use actions identified as “covered actions” pursuant to*
29 *Section 85058.5 be consistent with the Delta Plan. This section’s*
30 *findings, policies, and goals apply to Delta land use planning and*
31 *development.*

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

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

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

1 (2) *The permanent protection of the Delta’s natural and scenic*
2 *resources is the paramount concern to present and future residents*
3 *of the state and nation.*

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

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

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

16 (1) *Protect, maintain, enhance, and, where feasible, restore the*
17 *overall quality of the Delta environment and its natural and*
18 *artificial resources.*

19 (2) *Ensure the utilization and conservation of Delta resources,*
20 *taking into account the social and economic needs of the people*
21 *of the state.*

22 (3) *Maximize public access to Delta resources and maximize*
23 *public recreational opportunities in the Delta consistent with sound*
24 *resources conservation principles and constitutionally protected*
25 *rights of private property owners.*

26 (4) *Encourage state and local initiatives and cooperation in*
27 *preparing procedures to implement coordinated planning and*
28 *development for mutually beneficial uses, including educational*
29 *uses, in the Delta.*

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

33 (6) *Improve water quality to protect human health and the*
34 *environment consistent with achieving water quality objectives in*
35 *the Delta.*

36 85023. *The longstanding constitutional principle of reasonable*
37 *use and the public trust doctrine shall be the foundation of state*
38 *water management policy and are particularly important and*
39 *applicable to the Delta.*

CHAPTER 3. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

(c) The Fish and Game Code.

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

(e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.

(f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Section 1702.

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

1 retained pursuant to the State Civil Service Act (Part 2
2 (commencing with Section 18500) of Division 5 of Title 2 of the
3 Government Code).

4
5 *CHAPTER 4. DEFINITIONS*
6

7 85050. Unless the context otherwise requires, the definitions
8 set forth in this chapter govern the construction of this division.

9 85051. “Acquisition” means the acquisition of a fee interest
10 or any other interest, including easements, leases, and development
11 rights.

12 85052. “Adaptive management” means a framework and
13 flexible decisionmaking process for ongoing knowledge acquisition,
14 monitoring, and evaluation leading to continuous improvement in
15 management planning and implementation of a project to achieve
16 specified objectives.

17 85053. “Bay Delta Conservation Plan” or “BDCP” means a
18 multispecies conservation plan.

19 85054. “Coequal goals” means the two goals of providing a
20 more reliable water supply for California and protecting, restoring,
21 and enhancing the Delta ecosystem. The coequal goals shall be
22 achieved in a manner that protects and enhances the unique
23 cultural, recreational, natural resource, and agricultural values
24 of the Delta as an evolving place.

25 85055. “Commission” means the Delta Protection Commission
26 established in Division 19.5 (commencing with Section 29700) of
27 the Public Resources Code.

28 85056. “Conservancy” means the Sacramento-San Joaquin
29 Delta Conservancy established in Section 32320 of the Public
30 Resources Code.

31 85057. “Council” means the Delta Stewardship Council
32 established in Section 85200.

33 85057.5. (a) “Covered action” means a plan, program,
34 project, or activity that meets all of the following conditions:

35 (1) Will occur, in whole or in part, within the boundaries of the
36 Delta or Suisun Marsh.

37 (2) Will be carried out, approved, or funded by the state or a
38 local public agency.

39 (3) Is covered by one or more provisions of the Delta Plan.

- 1 (4) Will have a significant impact on achievement of one or both
2 of the coequal goals or the implementation of
3 government-sponsored flood control programs to reduce risks to
4 people, property, and state interests in the Delta.
- 5 (b) “Covered action” does not include any of the following:
- 6 (1) A regulatory action of a state agency.
- 7 (2) Routine maintenance and operation of the State Water
8 Project or the federal Central Valley Project.
- 9 (3) Regional transportation plans prepared pursuant to Section
10 65080 of the Government Code.
- 11 (4) Any plan, program, project, or activity within the secondary
12 zone of the Delta that the applicable metropolitan planning
13 organization under Section 65080 of the Government Code has
14 determined is consistent with either a sustainable communities
15 strategy or an alternative planning strategy that the State Air
16 Resources Board has determined would, if implemented, achieve
17 the greenhouse gas emission reduction targets established by that
18 board pursuant to subparagraph (A) of paragraph (2) of
19 subdivision (b) of Section 65080 of the Government Code. For
20 purposes of this paragraph, “consistent with” means consistent
21 with the use designation, density, building intensity, transportation
22 plan, and applicable policies specified for the area in the
23 sustainable communities strategy or the alternative planning
24 strategy, as applicable, and any infrastructure necessary to support
25 the plan, program, project, or activity.
- 26 (5) Routine maintenance and operation of any facility located,
27 in whole or in part, in the Delta, that is owned or operated by a
28 local public agency.
- 29 (6) Any plan, program, project, or activity that occurs, in whole
30 or in part, in the Delta, if both of the following conditions are met:
- 31 (A) The plan, program, project, or activity is undertaken by a
32 local public agency that is located, in whole or in part, in the Delta.
- 33 (B) Either a notice of determination is filed, pursuant to Section
34 21152 of the Public Resources Code, for the plan, program,
35 project, or activity by, or the plan, program, project, or activity is
36 fully permitted by, September 30, 2009.
- 37 85058. “Delta” means the Sacramento-San Joaquin Delta as
38 defined in Section 12220 and the Suisun Marsh, as defined in
39 Section 29101 of the Public Resources Code.

1 85059. “Delta Plan” means the comprehensive, long-term
2 management plan for the Delta as adopted by the council in
3 accordance with this division.

4 85060. “Delta watershed” means the Sacramento River
5 Hydrologic Region and the San Joaquin River Hydrologic Region
6 as described in the department’s Bulletin No. 160-05.

7 85064. “Public water agency” means a public entity, as defined
8 in Section 514, that provides water service, as defined in Section
9 515.

10 85066. “Restoration” means the application of ecological
11 principles to restore a degraded or fragmented ecosystem and
12 return it to a condition in which its biological and structural
13 components achieve a close approximation of its natural potential,
14 taking into consideration the physical changes that have occurred
15 in the past and the future impact of climate change and sea level
16 rise.

17 85067. “Strategic Plan” means both the “Delta Vision
18 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force
19 on October 17, 2008, and the “Delta Vision Implementation
20 Report” adopted by the Delta Vision Committee and dated
21 December 31, 2008.

22
23 **PART 2. EARLY ACTIONS**
24

25 85080. The council shall appoint a Delta Independent Science
26 Board in accordance with Section 85280.

27 85082. The council shall develop and implement a strategy to
28 appropriately engage participation of the federal agencies with
29 responsibilities in the Delta. This strategy shall include engaging
30 these federal agencies to develop the Delta Plan consistent with
31 the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec.
32 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251
33 et seq.), and Section 8 of the federal Reclamation Act of 1902.

34 85084. The council shall develop an interim plan that includes
35 recommendations for early actions, projects, and programs.

36 85084.5. The Department of Fish and Game, in consultation
37 with the United States Fish and Wildlife Service and the National
38 Marine Fisheries Service and based on the best available science,
39 shall develop and recommend to the board Delta flow criteria and
40 quantifiable biological objectives for aquatic and terrestrial species

1 of concern dependent on the Delta. The recommendations shall
2 be developed no later than 12 months after the date of enactment
3 of this division.

4 85085. The department shall do all of the following:

5 (a) Coordinate with the Department of Fish and Game, the
6 board, the California regional water quality control boards, and
7 the State Lands Commission efforts to cooperate with the United
8 States Bureau of Reclamation to construct and implement the
9 Two-Gates Fish Protection Demonstration Project by December
10 1, 2010.

11 (b) Evaluate the effectiveness of the Three Mile Slough Barrier
12 project.

13 (c) Expeditiously move ahead with other near term actions as
14 identified in the Strategic Plan.

15 (d) Assist in implementing early action ecosystem restoration
16 projects, including, but not limited to, Dutch Slough tidal marsh
17 restoration and Meins Island tidal marsh restoration.

18 85086. (a) The board shall establish an effective system of
19 Delta watershed diversion data collection and public reporting
20 by December 31, 2010.

21 (b) It is the intent of the Legislature to establish an accelerated
22 process to determine instream flow needs of the Delta for the
23 purposes of facilitating the planning decisions that are required
24 to achieve the objectives of the Delta Plan.

25 (c) (1) For the purpose of informing planning decisions for the
26 Delta Plan and the Bay Delta Conservation Plan, the board shall,
27 pursuant to its public trust obligations, develop new flow criteria
28 for the Delta ecosystem necessary to protect public trust resources.
29 In carrying out this section, the board shall review existing water
30 quality objectives and use the best available scientific information.
31 The flow criteria for the Delta ecosystem shall include the volume,
32 quality, and timing of water necessary for the Delta ecosystem
33 under different conditions. The flow criteria shall be developed in
34 a public process by the board within nine months of the enactment
35 of this division. The public process shall be in the form of an
36 informational proceeding conducted pursuant to Article 3
37 (commencing with Section 649) of Chapter 1.5 of Division 3 of
38 Title 23 of the California Code of Regulations, and shall provide
39 an opportunity for all interested persons to participate. The flow
40 criteria shall not be considered predecisional with regard to any

1 subsequent board consideration of a permit, including any permit
2 in connection with a final BDCP.

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

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

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

23 (e) The board shall submit its flow criteria determinations
24 pursuant to this section to the council for its information within
25 30 days of completing the determinations.

26 85087. The board, by December 31, 2010, shall submit to the
27 Legislature a prioritized schedule and estimate of costs to complete
28 instream flow studies for the Delta and for high priority rivers and
29 streams in the Delta watershed, not otherwise covered by Section
30 85086, by 2012, and for all major rivers and streams outside the
31 Sacramento River watershed by 2018. In developing this schedule,
32 the board shall consult with the Department of Fish and Game as
33 to the timing of its submission of recommendations for instream
34 flow needs.

35 85088. Until the board issues an order approving a change in
36 the point of diversion of the State Water Project and the federal
37 Central Valley Project from the southern Delta to a point on the
38 Sacramento River as specified in subdivision (c) of Section 85086,
39 the department shall not commence construction of any diversion,

1 conveyance, or other facility necessary to divert and convey water
 2 pursuant to the change in point of diversion.

3 85089. Construction of a new Delta conveyance facility shall
 4 not be initiated until the persons or entities that contract to receive
 5 water from the State Water Project and the federal Central Valley
 6 Project or a joint powers authority representing those entities have
 7 made arrangements or entered into contracts to pay for both of
 8 the following:

9 (a) The costs of the environmental review, planning, design,
 10 construction, and mitigation, including mitigation required
 11 pursuant to Division 13 (commencing with Section 21000 of the
 12 Public Resources Code), required for the construction, operation,
 13 and maintenance of any new Delta water conveyance facility.

14 (b) Full mitigation of property tax or assessments levied by
 15 local governments or special districts for land used in the
 16 construction, location, mitigation, or operation of new Delta
 17 conveyance facilities.

18

19 **PART 3. DELTA GOVERNANCE**

20

21 **CHAPTER 1. DELTA STEWARDSHIP COUNCIL**

22

23 85200. (a) The Delta Stewardship Council is hereby
 24 established as an independent agency of the state.

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

32 (2) No member of the council shall serve two consecutive terms,
 33 but a member may be reappointed after a period of two years
 34 following the end of his or her term, except that those members of
 35 the council that serve an initial term of one or two years may be
 36 immediately appointed to a subsequent full four-year term.

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

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

1 (C) *The initial terms of the members appointed by the Senate*
2 *Committee on Rules and the Speaker of the Assembly shall be four*
3 *years.*

4 (D) *Upon the expiration of each term described in*
5 *subparagraphs (A), (B), or (C), the term of each succeeding*
6 *member shall be four years.*

7 (2) *The Chairperson of the Delta Protection Commission shall*
8 *serve as a member of the council for the period during which he*
9 *or she holds the position as commission chairperson*

10 (d) *Any vacancy shall be filled by the appointing authority within*
11 *60 days. If the term of a council member expires, and no successor*
12 *is appointed within the allotted timeframe, the existing member*
13 *may serve up to 180 days beyond the expiration of his or her term.*

14 (e) *The council members shall select a chairperson from among*
15 *their members, who shall serve for not more than four years in*
16 *that capacity.*

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

20 85201. (a) *The chairperson shall serve full time. Other*
21 *members shall serve one-third time. The council may select a vice*
22 *chairperson and other officers determined to be necessary.*

23 (b) *Each member of the council shall receive the salary provided*
24 *for in Section 11564 of the Government Code.*

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

27 (d) *The council shall appoint an executive officer who shall*
28 *serve full time at the pleasure of the council.*

29 (e) *The executive officer shall hire employees necessary to carry*
30 *out council functions.*

31 (f) *The number of employees and qualifications of those*
32 *employees shall be determined by the council, subject to the*
33 *availability of funds.*

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

37 (h) *All persons employed by the council are state employees,*
38 *subject to the duties, responsibilities, limitations, and benefits of*
39 *the state.*

1 85202. Council members shall possess diverse expertise and
2 reflect a statewide perspective.

3 85203. The headquarters of the council shall be located in
4 Sacramento.

5 85204. The council shall establish and oversee a committee of
6 agencies responsible for implementing the Delta Plan. Each agency
7 shall coordinate its actions pursuant to the Delta Plan with the
8 council and the other relevant agencies.

9

10 CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE
11 COUNCIL

12

13 85210. The council has all of the following powers:

14 (a) To sue or be sued.

15 (b) To enter into contracts.

16 (c) To employ the services of public, nonprofit, and private
17 entities.

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

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

23 (f) To receive funds, including funds from private and local
24 governmental sources, contributions from public and private
25 sources, as well as state and federal appropriations.

26 (g) To disburse funds through grants, public assistance, loans,
27 and contracts.

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

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

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

36 (k) To hold hearings in all parts of the state necessary to carry
37 out the powers vested in it, and for those purposes has the powers
38 conferred upon the heads of state departments pursuant to Article
39 2 (commencing with Section 11180) of Chapter 2 of Part 1 of
40 Division 3 of Title 2 of the Government Code. Any hearing by the

1 council may be conducted by any member of the council, or other
2 designee, upon authorization of the council, and he or she shall
3 have the powers granted to the council by this section, provided
4 that any final action of the council shall be taken by a majority of
5 the membership of the council at a meeting duly called and held.

6 85210.5. A majority of the voting members of the council shall
7 constitute a quorum for the transaction of the business of the
8 council. A majority vote of the voting membership shall be required
9 to take action with respect to any matter unless otherwise specified
10 in this division. The vote of each member shall be individually
11 recorded.

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

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

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

24 85212. The council shall review and provide timely advice to
25 local and regional planning agencies regarding the consistency
26 of local and regional planning documents, including sustainable
27 communities strategies and alternative planning strategies
28 prepared pursuant to Section 65080 of the Government Code, with
29 the Delta Plan. The council's input shall include, but not be limited
30 to, reviewing the consistency of local and regional planning
31 documents with the ecosystem restoration needs of the Delta and
32 reviewing whether the lands set aside for natural resource
33 protection are sufficient to meet the Delta's ecosystem needs. A
34 metropolitan planning organization preparing a regional
35 transportation plan under Section 65080 of the Government Code
36 that includes land within the primary or secondary zones of the
37 Delta shall consult with the council early in the planning process
38 regarding the issues and policy choices relating to the council's
39 advice. No later than 60 days prior to the adoption of a final
40 regional transportation plan, the metropolitan planning

1 organization shall provide the council with a draft sustainable
 2 communities strategy and an alternative planning strategy, if any.
 3 Concurrently, the metropolitan planning organization shall provide
 4 notice of its submission to the council in the same manner in which
 5 agencies file a certificate of consistency pursuant to Section 85225.
 6 If the council concludes that the draft sustainable communities
 7 strategy or alternative planning strategy is inconsistent with the
 8 Delta Plan, the council shall provide written notice of the claimed
 9 inconsistency to the metropolitan planning organization no later
 10 than 30 days prior to the adoption of the final regional
 11 transportation plan. If the council provides timely notice of a
 12 claimed inconsistency, the metropolitan planning organization's
 13 adoption of the final regional transportation plan shall include a
 14 detailed response to the council's notice.

15

16 *CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC*
 17 *AGENCY ACTIONS*

18

19 85225. A state or local public agency that proposes to
 20 undertake a covered action, prior to initiating the implementation
 21 of that covered action, shall prepare a written certification of
 22 consistency with detailed findings as to whether the covered action
 23 is consistent with the Delta Plan and shall submit that certification
 24 to the council.

25 85225.5. To assist state and local public agencies in preparing
 26 the required certification, the council shall develop procedures
 27 for early consultation with the council on the proposed covered
 28 action.

29 85225.10. (a) Any person who claims that a proposed covered
 30 action is inconsistent with the Delta Plan and, as a result of that
 31 inconsistency, the action will have a significant adverse impact
 32 on the achievement of one or both of the coequal goals or
 33 implementation of government-sponsored flood control programs
 34 to reduce risks to people and property in the Delta, may file an
 35 appeal with regard to a certification of consistency submitted to
 36 the council.

37 (b) The appeal shall clearly and specifically set forth the basis
 38 for the claim, including specific factual allegations, that the
 39 covered action is inconsistent with the Delta Plan. The council
 40 may request from the appellant additional information necessary

1 to clarify, amplify, correct, or otherwise supplement the
2 information submitted with the appeal, within a reasonable period.

3 (c) The council, or by delegation the executive officer, may
4 dismiss the appeal for failure of the appellant to provide
5 information requested by the council within the period provided,
6 if the information requested is in the possession or under the
7 control of the appellant.

8 85225.15. The appeal shall be filed no later than 30 days after
9 the submission of the certification of consistency. If no person
10 appeals the certification of consistency, the state or local public
11 agency may proceed to implement the covered action.

12 85225.20. The appeal shall be heard by the council within 60
13 days of the date of the filing of the appeal, unless the council, or
14 by delegation the executive officer, determines that the issue raised
15 on appeal is not within the council's jurisdiction or does not raise
16 an appealable issue. The council shall make its decision on the
17 appeal within 60 days of hearing the appeal.

18 85225.25. After a hearing on an appealed action, the council
19 shall make specific written findings either denying the appeal or
20 remanding the matter to the state or local public agency for
21 reconsideration of the covered action based on the finding that
22 the certification of consistency is not supported by substantial
23 evidence in the record before the state or local public agency that
24 filed the certification. Upon remand, the state or local agency may
25 determine whether to proceed with the covered action. If the agency
26 decides to proceed with the action or with the action as modified
27 to respond to the findings of the council, the agency shall, prior
28 to proceeding with the action, file a revised certification of
29 consistency that addresses each of the findings made by the council
30 and file that revised certification with the council.

31 85225.30. The council shall adopt administrative procedures
32 governing appeals, which shall be exempt from Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3 of Title
34 2 of the Government Code.

35

36 *CHAPTER 4. DELTA WATERMASTER*

37

38 85230. (a) The board, in consultation with the council, shall
39 appoint, for a term of four years, a special master for the Delta,
40 whose title shall be "the Delta Watermaster."

1 (b) The board shall adopt internal procedures delegating
 2 authority to the Delta Watermaster. The Delta Watermaster shall
 3 exercise the board's authority to provide timely monitoring and
 4 enforcement of board orders and permit terms and conditions. The
 5 Delta Watermaster's delegated authority shall include authority
 6 to require monitoring and reporting, authority for approvals
 7 delegated to an officer or employee of the board by the terms of a
 8 water right permit or license, authority to approve temporary
 9 urgency changes pursuant to Chapter 6.6 (commencing with
 10 section 1435) of Part 2 of Division 2, and authority to issue a
 11 notice of proposed cease and desist order or administrative civil
 12 liability complaint. The Delta Watermaster's authority shall be
 13 limited to diversions in the Delta and the application and
 14 enforcement of the board's requirements that apply to conditions
 15 in the Delta.

16 (c) The internal procedures adopted by the board shall provide
 17 for due process in adjudicative proceedings, and may establish
 18 procedures for the issuance of a stay of any order or decision of
 19 the Delta Watermaster for which a petition for reconsideration is
 20 filed or reconsideration is ordered under Section 1122. The board
 21 may provide any additional duties or needs of the Delta
 22 Watermaster that the board deems necessary for effective
 23 day-to-day enforcement of its decisions.

24 (d) The Delta Watermaster shall submit regular reports to the
 25 board and the council including, but not limited to, reports on
 26 water rights administration, water quality issues, and conveyance
 27 operations.

28

29 *CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA*
 30 *SCIENCE PROGRAM*

31

32 85280. (a) The Delta Independent Science Board is hereby
 33 established in state government.

34 (1) The Delta Independent Science Board shall consist of no
 35 more than 10 members appointed by the council. The term of office
 36 for members of the Delta Independent Science Board shall be five
 37 years. A member may serve no more than two terms.

38 (2) Members of the Delta Independent Science Board shall be
 39 nationally or internationally prominent scientists with appropriate
 40 expertise to evaluate the broad range of scientific programs that

1 *support adaptive management of the Delta. The members shall*
2 *not be directly affiliated with a program or agency subject to the*
3 *review activities of the Delta Independent Science Board.*

4 *(3) The Delta Independent Science Board shall provide oversight*
5 *of the scientific research, monitoring, and assessment programs*
6 *that support adaptive management of the Delta through periodic*
7 *reviews of each of those programs that shall be scheduled to ensure*
8 *that all Delta scientific research, monitoring, and assessment*
9 *programs are reviewed at least once every four years.*

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

14 *(b) After consultation with the Delta Independent Science Board,*
15 *the council shall appoint a lead scientist for the Delta Science*
16 *Program.*

17 *(1) The lead scientist shall meet all of the following*
18 *qualifications:*

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

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

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

27 *(D) Have the capability to guide the application of an adaptive*
28 *management process to resource management policy decisions in*
29 *the Delta.*

30 *(2) The term of office for the lead scientist shall be no more*
31 *than three years. The lead scientist may serve no more than two*
32 *terms.*

33 *(3) The lead scientist shall oversee the implementation of the*
34 *Delta Science Program. In carrying out that responsibility, the*
35 *lead scientist shall regularly consult with the agencies participating*
36 *in the program.*

37 *(4) The mission of the Delta Science Program shall be to provide*
38 *the best possible unbiased scientific information to inform water*
39 *and environmental decisionmaking in the Delta. That mission shall*
40 *be carried out through funding research, synthesizing and*

1 *communicating scientific information to policymakers and*
 2 *decisionmakers, promoting independent scientific peer review,*
 3 *and coordinating with Delta agencies to promote science-based*
 4 *adaptive management. The Delta Science Program shall assist*
 5 *with development and periodic updates of the Delta Plan's adaptive*
 6 *management program.*

7 (c) *The Delta Science Program shall function as a replacement*
 8 *for, and successor to, the CALFED Science Program and the Delta*
 9 *Independent Science Board shall replace the CALFED Independent*
 10 *Science Board.*

11

12 *PART 4. COMPREHENSIVE DELTA PLANNING*

13

14 *CHAPTER 1. THE DELTA PLAN*

15

16 85300. (a) *On or before January 1, 2012, the council shall*
 17 *develop, adopt, and commence implementation of the Delta Plan*
 18 *pursuant to this part that furthers the coequal goals. The Delta*
 19 *Plan shall include subgoals and strategies to assist in guiding*
 20 *state and local agency actions related to the Delta. In developing*
 21 *the Delta Plan, the council shall consider each of the strategies*
 22 *and actions set forth in the Strategic Plan and may include any of*
 23 *those strategies or actions in the Delta Plan. The Delta Plan may*
 24 *also identify specific actions that state or local agencies may take*
 25 *to implement the subgoals and strategies.*

26 (b) *In developing the Delta Plan, the council shall consult with*
 27 *federal, state, and local agencies with responsibilities in the Delta.*
 28 *All state agencies with responsibilities in the Delta shall cooperate*
 29 *with the council in developing the Delta Plan, upon request of the*
 30 *council.*

31 (c) *The council shall review the Delta Plan at least once every*
 32 *five years and may revise it as the council deems appropriate. The*
 33 *council may request any state agency with responsibilities in the*
 34 *Delta to make recommendations with respect to revision of the*
 35 *Delta Plan.*

36 (d) (1) *The council shall develop the Delta Plan consistent with*
 37 *all of the following:*

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

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

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

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

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

10 85301. (a) *The commission shall develop, for consideration*
11 *and incorporation into the Delta Plan by the council, a proposal*
12 *to protect, enhance, and sustain the unique cultural, historical,*
13 *recreational, agricultural, and economic values of the Delta as*
14 *an evolving place, in a manner consistent with the coequal goals.*
15 *For the purpose of carrying out this subdivision, the commission*
16 *may include in the proposal the relevant strategies described in*
17 *the Strategic Plan.*

18 (b) (1) *The commission shall include in the proposal a plan to*
19 *establish state and federal designation of the Delta as a place of*
20 *special significance, which may include application for a federal*
21 *designation of the Delta as a National Heritage Area.*

22 (2) *The commission shall include in the proposal a regional*
23 *economic plan to support increased investment in agriculture,*
24 *recreation, tourism, and other resilient land uses in the Delta. The*
25 *regional economic plan shall include detailed recommendations*
26 *for the administration of the Delta Investment Fund created by*
27 *Section 29778.5 of the Public Resources Code.*

28 (c) *For the purposes of assisting the commission in its*
29 *preparation of the proposal, both of the following actions shall be*
30 *undertaken:*

31 (1) *The Department of Parks and Recreation shall prepare a*
32 *proposal, for submission to the commission, to expand within the*
33 *Delta the network of state recreation areas, combining existing*
34 *and newly designated areas. The proposal may incorporate*
35 *appropriate aspects of any existing plans, including the Central*
36 *Valley Vision Implementation Plan adopted by the Department of*
37 *Parks and Recreation.*

38 (2) *The Department of Food and Agriculture shall prepare a*
39 *proposal, for submission to the commission, to establish market*

1 *incentives and infrastructure to protect and enhance the economic*
2 *and public values of Delta agriculture.*

3 *(d) The commission shall submit the proposal developed*
4 *pursuant to subdivision (a) to the council. The council shall*
5 *consider the proposal and may include any portion of the proposal*
6 *in the Delta Plan if the council, in its discretion, determines that*
7 *the portion of the proposal is feasible and consistent with the*
8 *objectives of the Delta Plan and the purposes of this division.*

9 *85302. (a) The implementation of the Delta Plan shall further*
10 *the restoration of the Delta ecosystem and a reliable water supply.*

11 *(b) The geographic scope of the ecosystem restoration projects*
12 *and programs identified in the Delta Plan shall be the Delta, except*
13 *that the Delta Plan may include recommended ecosystem projects*
14 *outside the Delta that will contribute to achievement of the coequal*
15 *goals.*

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

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

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

20 *(3) Diverse and biologically appropriate habitats and ecosystem*
21 *processes.*

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

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

26 *(d) The Delta Plan shall include measures to promote a more*
27 *reliable water supply that address all of the following:*

28 *(1) Meeting the needs for reasonable and beneficial uses of*
29 *water.*

30 *(2) Sustaining the economic vitality of the state.*

31 *(3) Improving water quality to protect human health and the*
32 *environment.*

33 *(e) The following subgoals and strategies for restoring a healthy*
34 *ecosystem shall be included in the Delta Plan:*

35 *(1) Restore large areas of interconnected habitats within the*
36 *Delta and its watershed by 2100.*

37 *(2) Establish migratory corridors for fish, birds, and other*
38 *animals along selected Delta river channels.*

1 (3) *Promote self-sustaining, diverse populations of native and*
2 *valued species by reducing the risk of take and harm from invasive*
3 *species.*

4 (4) *Restore Delta flows and channels to support a healthy*
5 *estuary and other ecosystems.*

6 (5) *Improve water quality to meet drinking water, agriculture,*
7 *and ecosystem long-term goals.*

8 (6) *Restore habitat necessary to avoid a net loss of migratory*
9 *bird habitat and, where feasible, increase migratory bird habitat*
10 *to promote viable populations of migratory birds.*

11 (f) *The council shall consider, for incorporation into the Delta*
12 *Plan, actions designed to implement the subgoals and strategies*
13 *described in subdivision (e).*

14 (g) *In carrying out this section, the council shall make use of*
15 *the best available science.*

16 (h) *The Delta Plan shall include recommendations regarding*
17 *state agency management of lands in the Delta.*

18 85303. *The Delta Plan shall promote statewide water*
19 *conservation, water use efficiency, and sustainable use of water.*

20 85304. *The Delta Plan shall promote options for new and*
21 *improved infrastructure relating to the water conveyance in the*
22 *Delta, storage systems, and for the operation of both to achieve*
23 *the coequal goals.*

24 85305. (a) *The Delta Plan shall attempt to reduce risks to*
25 *people, property, and state interests in the Delta by promoting*
26 *effective emergency preparedness, appropriate land uses, and*
27 *strategic levee investments.*

28 (b) *The council may incorporate into the Delta Plan the*
29 *emergency preparedness and response strategies for the Delta*
30 *developed by the California Emergency Management Agency*
31 *pursuant to Section 12994.5.*

32 85306. *The council, in consultation with the Central Valley*
33 *Flood Protection Board, shall recommend in the Delta Plan*
34 *priorities for state investments in levee operation, maintenance,*
35 *and improvements in the Delta, including both levees that are a*
36 *part of the State Plan of Flood Control and nonproject levees.*

37 85307. (a) *The Delta Plan may identify actions to be taken*
38 *outside of the Delta, if those actions are determined to significantly*
39 *reduce flood risks in the Delta.*

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

1 (c) *The council, in consultation with the Department of*
 2 *Transportation, may address in the Delta Plan the effects of climate*
 3 *change and sea level rise on the three state highways that cross*
 4 *the Delta.*

5 (d) *The council, in consultation with the State Energy Resources*
 6 *Conservation and Development Commission and the Public*
 7 *Utilities Commission, may incorporate into the Delta Plan*
 8 *additional actions to address the needs of Delta energy*
 9 *development, energy storage, and energy distribution.*

10 85308. *The Delta Plan shall meet all of the following*
 11 *requirements:*

12 (a) *Be based on the best available scientific information and*
 13 *the independent science advice provided by the Delta Independent*
 14 *Science Board.*

15 (b) *Include quantified or otherwise measurable targets*
 16 *associated with achieving the objectives of the Delta Plan.*

17 (c) *Where appropriate, utilize monitoring, data collection, and*
 18 *analysis of actions sufficient to determine progress toward meeting*
 19 *the quantified targets.*

20 (d) *Describe the methods by which the council shall measure*
 21 *progress toward achieving the coequal goals.*

22 (e) *Where appropriate, recommend integration of scientific and*
 23 *monitoring results into ongoing Delta water management.*

24 (f) *Include a science-based, transparent, and formal adaptive*
 25 *management strategy for ongoing ecosystem restoration and water*
 26 *management decisions.*

27 85309. *The department, in consultation with the United States*
 28 *Army Corps of Engineers and the Central Valley Flood Protection*
 29 *Board, shall prepare a proposal to coordinate flood and water*
 30 *supply operations of the State Water Project and the federal*
 31 *Central Valley Project, and submit the proposal to the council for*
 32 *consideration for incorporation into the Delta Plan. In drafting*
 33 *the proposal, the department shall consider all related actions set*
 34 *forth in the Strategic Plan.*

35

36 *CHAPTER 2. BAY DELTA CONSERVATION PLAN*

37

38 85320. (a) *The Bay Delta Conservation Plan (BDCP) shall*
 39 *be considered for inclusion in the Delta Plan in accordance with*
 40 *this chapter.*

1 ***(b) The BDCP shall not be incorporated into the Delta Plan***
2 ***and the public benefits associated with the BDCP shall not be***
3 ***eligible for state funding, unless the BDCP does all of the***
4 ***following:***

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

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

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

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

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

27 ***(D) The potential effects on migratory fish and aquatic***
28 ***resources.***

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

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

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

36 ***(c) The department shall consult with the council and the Delta***
37 ***Independent Science Board during the development of the BDCP.***
38 ***The council shall be a responsible agency in the development of***
39 ***the environmental impact report. The Delta Independent Science***
40 ***Board shall review the draft environmental impact report and***

1 *submit its comments to the council and the Department of Fish*
2 *and Game.*

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

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

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

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

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

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

CHAPTER 3. OTHER PLANS FOR THE DELTA

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

SEC. 40. (a) Pursuant to Section 75026 of the Public Resources Code, the sum of twenty-eight million dollars (\$28,000,000) is hereby appropriated to the Department of Water Resources for expenditure by that department pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code for the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The Department of Water Resources shall expend such funds only consistent with the requirements of Sections 75026 and 75027 of the Public Resources Code.

(b) It is the intent of the Legislature 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 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).

SEC. 41. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 42. This act shall take effect only if Senate Bill 5, Senate Bill 6, and Senate Bill 7 of the 2009–10 Seventh Extraordinary Session of the Legislature are enacted and become operative.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, October 23, 2009 (JR11)**

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