

AMENDED IN SENATE NOVEMBER 2, 2009

AMENDED IN SENATE OCTOBER 29, 2009

CALIFORNIA LEGISLATURE—2009—10 SEVENTH EXTRAORDINARY SESSION

SENATE BILL

No. 1

Introduced by Senators Simitian and Steinberg

October 23, 2009

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, 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, 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.

(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.

(6) The bill would take effect only if SB 5, SB 6, and SB 7 of the 2009–10 7th Extraordinary Session of the Legislature are enacted and 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:

1 29702. The Legislature further finds and declares that the basic
2 goals of the state for the Delta are the following:

3 (a) Achieve the two coequal goals of providing a more reliable
4 water supply for California and protecting, restoring, and enhancing
5 the Delta ecosystem. The coequal goals shall be achieved in a
6 manner that protects and enhances the unique cultural, recreational,
7 natural resource, and agricultural values of the Delta as an evolving
8 place.

9 (b) Protect, maintain, and, where possible, enhance and restore
10 the overall quality of the Delta environment, including, but not
11 limited to, agriculture, wildlife habitat, and recreational activities.

12 (c) Ensure orderly, balanced conservation and development of
13 Delta land resources.

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

16 SEC. 2. Section 29703.5 is added to the Public Resources Code,
17 to read:

18 29703.5. The Legislature further finds and declares both of the
19 following:

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

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

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

35 29722.5. “Delta Plan” means the plan adopted by the Delta
36 Stewardship Council pursuant to Section 85300 of the Water Code.

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

39 29722.7. “Economic sustainability plan” means the plan
40 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, Osladin,
6 Lathrop, Brentwood, West Sacramento, and Oakley, and any other
7 cities that may be incorporated in the future in the primary zone.

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

10 29727. “Port” means the Port of Sacramento and the Port of
11 Stockton, including all the land owned or leased by those ports,
12 or potential sites identified in the Delta county general plans as of
13 January 1, 2010, and otherwise authorized by law.

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

16 29728.5. “Resources management plan” means the plan adopted
17 by the commission pursuant to Section 29760.

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

20 29733. “Unincorporated towns” means the communities of
21 Walnut Grove, Clarksburg, Courtland, Hood, Locke, Knightsen,
22 Collinsville, and Ryde.

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

25 29735. There is hereby created the Delta Protection
26 Commission consisting of 15 members as follows:

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

31 (b) (1) Two elected city council members shall be selected and
32 appointed by city selection committees, from the appropriate
33 regions specified in subparagraphs (A) and (B), one in each of the
34 following areas:

35 (A) One from the south Delta, consisting of the County of San
36 Joaquin.

37 (B) One from the west Delta, from either the County of Contra
38 Costa or the County of Solano, on a rotating basis.

39 (2) One elected city council member shall be selected and
40 appointed by city selection committees, from regional and area

1 councils of government from the north Delta, consisting of the
2 Counties of Yolo and Sacramento.

3 (3) A city council member appointed pursuant to this subdivision
4 may select a designee for purposes of this subdivision.

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

7 (c) One member each from the board of directors of three
8 different reclamation districts that are located within the primary
9 zone who are residents of the Delta, and who are elected by the
10 trustees of reclamation districts pursuant to paragraphs (1), (2),
11 and (3). Each reclamation district may nominate one director to
12 be a member. The member from an area described in paragraph
13 (1), (2), or (3) shall be selected from among the nominees by a
14 majority vote of the reclamation districts in that area. A member
15 selected pursuant to this subdivision may select a designee for this
16 purpose. For the purposes of this section, each reclamation district
17 shall have one vote. Reclamation district members shall consist
18 of the following:

19 (1) One member from the area of the North Delta Water Agency
20 as described in Section 9.1 of the North Delta Water Agency Act
21 (Chapter 283 of the Statutes of 1973).

22 (2) One member from an area including the west Delta
23 consisting of the area of Contra Costa County within the Delta and
24 within the Central Delta Water Agency as described in Section
25 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the
26 Statutes of 1973).

27 (3) One member from the area of the South Delta Water Agency
28 as described in Section 9.1 of the South Delta Water Agency Act
29 (Chapter 1089 of the Statutes of 1973).

30 (d) The Secretary of Food and Agriculture, or the secretary's
31 sole designee.

32 (e) The executive officer of the State Lands Commission, or the
33 executive officer's sole designee.

34 (f) The Secretary of the Natural Resources Agency, or his or
35 her sole designee.

36 (g) The Secretary of Business, Transportation and Housing, or
37 his or her sole designee.

38 SEC. 10. Section 29735.1 of the Public Resources Code is
39 amended to read:

1 29735.1. (a) A member of the commission described in
2 subdivision (a) of Section 29735 may, subject to the confirmation
3 of his or her appointing power, appoint an alternate to represent
4 him or her at a commission meeting. An alternate may serve prior
5 to confirmation for a period not to exceed 90 days from the date
6 of appointment, unless and until confirmation is denied.

7 (b) The alternate shall serve at the pleasure of the member who
8 appoints him or her and shall have all of the powers and duties of
9 a member of the commission, except that the alternate shall only
10 participate and vote in a meeting in the absence of the member
11 who appoints him or her. All provisions of law relating to conflicts
12 of interest that are applicable to a member shall apply to an
13 alternate. If a member has, or is known to have, a conflict of
14 interest on any matter, the member’s alternate is ineligible to vote
15 on that matter.

16 SEC. 11. Section 29736 of the Public Resources Code is
17 repealed.

18 SEC. 12. Section 29736 is added to the Public Resources Code,
19 to read:

20 29736. The appointed members of the commission shall serve
21 at the pleasure of their appointing entities.

22 SEC. 13. Section 29738 of the Public Resources Code is
23 amended to read:

24 29738. The office of an appointed member of the commission
25 is vacated upon the loss of any qualification required for
26 appointment, and in that event the appointing authority shall
27 appoint a successor within 30 days of the occurrence of the
28 vacancy.

29 SEC. 14. Section 29739 of the Public Resources Code is
30 repealed.

31 SEC. 15. Section 29739 is added to the Public Resources Code,
32 to read:

33 29739. (a) The commission, during the first meeting of the
34 commission after January 1, 2010, shall elect from among the
35 members identified in subdivision (a) of Section 29735 a
36 chairperson who shall serve for one year.

37 (b) Subsequent chairpersons shall serve for two years and shall
38 be elected from among the members identified in subdivision (a)
39 of Section 29735.

1 (c) The chairperson shall serve as a voting member of the Delta
2 Stewardship Council.

3 SEC. 16. Section 29741 of the Public Resources Code is
4 amended to read:

5 29741. The time and place of the first meeting of the
6 commission, on and after January 1, 2010, shall be prescribed by
7 the Governor, but in no event shall it be scheduled for a date later
8 than January 31, 2010. All meetings after the first meeting shall
9 be held in a city within the Delta.

10 SEC. 17. Section 29751 of the Public Resources Code is
11 amended to read:

12 29751. A majority of the voting members of the commission
13 shall constitute a quorum for the transaction of the business of the
14 commission. A majority vote of the voting membership shall be
15 required to take action with respect to any matter unless otherwise
16 specified in this division. The vote of each member shall be
17 individually recorded.

18 SEC. 18. Section 29752 of the Public Resources Code is
19 amended to read:

20 29752. The commission shall adopt its own rules, regulations,
21 and procedures necessary for its organization and operation, and
22 shall conduct its meetings in compliance with the Bagley-Keene
23 Open Meeting Act (Article 9 (commencing with Section 11120)
24 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
25 Code).

26 SEC. 19. Section 29753 of the Public Resources Code is
27 repealed.

28 SEC. 20. Section 29753 is added to the Public Resources Code,
29 to read:

30 29753. (a) The commission shall appoint at least one advisory
31 committee to provide recommendations regarding the diverse
32 interests within the Delta. At a minimum, the advisory committees
33 shall include representatives of state agencies and other
34 stakeholders with interests in the Delta's ecosystem, water supply,
35 and socioeconomic sustainability, including, but not limited to, its
36 recreational, agricultural, flood control, environmental, and water
37 resources, and state, local, and utility infrastructure. The
38 commission shall encourage participation of various federal
39 agencies, including the United States Bureau of Reclamation, the

1 United States Fish and Wildlife Service, the United States Army
2 Corps of Engineers, and others as appropriate.

3 (b) The commission may appoint committees from its
4 membership or may appoint additional advisory committees from
5 members of other interested public agencies and private groups.

6 (c) The commission shall seek advice and recommendations
7 from advisory committees appointed by local government that are
8 involved in subject matters affecting the Delta.

9 SEC. 21. Section 29754 of the Public Resources Code is
10 amended to read:

11 29754. The commission shall establish and maintain an office
12 within the Delta or the City of Rio Vista, and for this purpose the
13 commission may rent or own property and equipment. Any rule,
14 regulation, procedure, plan, or other record of the commission
15 which is of such a nature as to constitute a public record under
16 state law shall be available for inspection and copying pursuant to
17 the California Public Records Act (Chapter 3.5 (commencing with
18 Section 6250) of Division 7 of Title 1 of the Government Code).

19 SEC. 22. Section 29756.5 of the Public Resources Code is
20 amended to read:

21 29756.5. The commission may act as the facilitating agency
22 for the implementation of any joint habitat restoration or
23 enhancement programs located within the primary zone of the
24 Delta, including, but not limited to, a national heritage area
25 designation in the Delta.

26 SEC. 23. Section 29759 is added to the Public Resources Code,
27 to read:

28 29759. (a) Not later than July 1, 2011, the commission shall
29 prepare and adopt, by a majority vote of the membership of the
30 commission, an economic sustainability plan. The economic
31 sustainability plan shall include information and recommendations
32 that inform the Delta Stewardship Council’s policies regarding the
33 socioeconomic sustainability of the Delta region.

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

36 (1) Public safety recommendations, such as flood protection
37 recommendations.

38 (2) The economic goals, policies, and objectives in local general
39 plans and other local economic efforts, including recommendations

1 on continued socioeconomic sustainability of agriculture and its
2 infrastructure and legacy communities in the Delta.

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

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

8 SEC. 24. Section 29761 of the Public Resources Code is
9 repealed.

10 SEC. 25. Section 29761 is added to the Public Resources Code,
11 to read:

12 29761. The commission shall adopt, by a majority vote, the
13 economic sustainability plan and each plan update after at least
14 three public hearings, with at least one hearing held in a community
15 in the north Delta, one hearing in the south Delta, and one hearing
16 in the west Delta.

17 SEC. 26. Section 29761.5 of the Public Resources Code is
18 repealed.

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

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

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

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

34 SEC. 29. Section 29763 of the Public Resources Code is
35 amended to read:

36 29763. Within 180 days from the date of the adoption of the
37 resources management plan or any amendments, changes, or
38 updates, to the resources management plan by the commission,
39 each local government shall submit to the commission proposed
40 amendments to its general plan that are intended to make the

1 general plan consistent with the resources management plan with
2 respect to land located within the primary zone.

3 SEC. 30. Section 29764 of the Public Resources Code is
4 repealed.

5 SEC. 31. Section 29764 is added to the Public Resources Code,
6 to read:

7 29764. Land use authority granted to the commission by this
8 division is limited to the primary zone, and shall not preempt local
9 government general plans for lands within the secondary zone.

10 SEC. 32. Section 29771 of the Public Resources Code is
11 amended to read:

12 29771. After a hearing on an appealed action pursuant to
13 Section 29770, the commission shall either deny the appeal or
14 remand the matter to the local government or local agency for
15 reconsideration, after making specific findings. Upon remand, the
16 local government or local agency shall modify the appealed action
17 and resubmit the matter for review to the commission. A proposed
18 action appealed pursuant to this section shall not be effective until
19 the commission has adopted written findings, based on substantial
20 evidence in the record, that the action is consistent with the
21 resources management plan, the approved portions of local
22 government general plans that implement the resources
23 management plan, and this division.

24 SEC. 33. Section 29773 is added to the Public Resources Code,
25 to read:

26 29773. (a) The commission may review and provide comments
27 and recommendations to the Delta Stewardship Council on any
28 significant project or proposed project within the scope of the Delta
29 Plan, including, but not limited to, actions by state and federal
30 agencies, that may affect the unique cultural, recreational, and
31 agricultural values within the primary and secondary zones. Review
32 and comment authority granted to the commission shall include,
33 but is not limited to, all of the following:

34 (1) Identification of impacts to the cultural, recreational, and
35 agricultural values of the Delta.

36 (2) Recommendations for actions that may avoid, reduce, or
37 mitigate impacts to the cultural, recreational, and agricultural values
38 of the Delta.

39 (3) Review of consistency of the project or proposed project
40 with the resources management plan and the Delta Plan.

1 (4) Identification and recommendation of methods to address
2 Delta community concerns regarding large-scale habitat plan
3 development and implementation.

4 (b) The council shall take into consideration the
5 recommendations of the commission, including the
6 recommendations included in the economic sustainability plan. If
7 the council, in its discretion, determines that a recommendation
8 of the commission is feasible and consistent with the objectives
9 of the Delta Plan and the purposes of this division, the council
10 shall adopt the recommendation.

11 SEC. 34. Section 29773.5 is added to the Public Resources
12 Code, to read:

13 29773.5. On or before July 1, 2010, the commission shall
14 prepare and submit to the Legislature recommendations regarding
15 the potential expansion of or change to the primary zone or the
16 Delta. The commission shall consider recommendations on the
17 status of all of the following areas:

18 (a) Rio Vista.

19 (b) Isleton.

20 (c) Bethel Island.

21 (d) Brannan-Andrus Island.

22 (e) Cosumnes/Mokelumne floodway.

23 (f) The San Joaquin/South Delta lowlands.

24 SEC. 35. Section 29778.5 is added to the Public Resources
25 Code, to read:

26 29778.5. The Delta Investment Fund is hereby created in the
27 State Treasury. Any funds within the Delta Investment Fund shall
28 be available, upon appropriation by the Legislature, to the
29 commission for the implementation of the regional economic
30 sustainability plan, developed pursuant to Section 29759, for the
31 purposes of enhancing Delta communities. The Delta Investment
32 Fund may receive funds from federal, state, local, and private
33 sources.

34 SEC. 36. Section 29780 of the Public Resources Code is
35 amended to read:

36 29780. On January 1 of each year, the commission shall submit
37 to the Governor and the Legislature a report describing the progress
38 that has been made in achieving the objectives of this division.
39 The report shall include, but need not be limited to, all of the
40 following:

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

4 (1) Determining the consistency of local general plans with the
5 Delta Plan.

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

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

9 (4) Facilitating regional economic sustainability.

10 (5) Supporting other regional activities for the enhancement of
11 Delta communities.

12 (b) An update of the economic sustainability plan, using baseline
13 conditions set forth in the original economic sustainability plan.

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

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

18

19 DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA
20 CONSERVANCY

21

22 CHAPTER 1. GENERAL PROVISIONS

23

24 32300. This division shall be known, and may be cited, as the
25 Sacramento-San Joaquin Delta Conservancy Act.

26 32301. The Legislature finds and declares all of the following:

27 (a) The Sacramento-San Joaquin Delta is a unique natural
28 resource of local, state, and national significance.

29 (b) At 1,300 square miles, the Delta is the largest estuary on the
30 west coast of North and South America.

31 (c) Its rivers and labyrinths of sloughs and channels are home
32 to 750 species of plants and wildlife as well as 55 species of fish,
33 provide habitat for 700 native plant and animal species, and are
34 part of the Pacific Flyway.

35 (d) The Delta contains more than 500,000 acres of agricultural
36 land, with unique soils, and farmers who are creative and utilize
37 innovative agriculture, such as carbon sequestration crops,
38 subsidence reversal crops, wildlife-friendly crops, and crops direct
39 for marketing to the large urban populations nearby.

1 (e) The Delta and Suisun Marsh provide numerous opportunities
2 for recreation, such as boating, kayaking, fishing, hiking, birding,
3 and hunting. Navigable waterways in the Delta are available for
4 public access and currently make up the majority of recreational
5 opportunities. There is a need for land-based recreational access
6 points including parks, picnic areas, and campgrounds.

7 (f) The Delta’s history is rich with a distinct natural, agricultural,
8 and cultural heritage. It is home to the community of Locke, the
9 only town in the United States built primarily by early Chinese
10 immigrants. Other legacy communities include Bethel Island,
11 Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio
12 Vista, Ryde, and Walnut Grove.

13 (g) The Delta is home to more than 500,000 people and 200,000
14 jobs, and contributes over thirty-five billion dollars
15 (\$35,000,000,000) to the state’s economy.

16 (h) In addition, the Delta provides water to more than 25 million
17 Californians and three million acres of agricultural land. It supports
18 a four hundred billion dollar (\$400,000,000,000) economy and is
19 traversed by energy, communications, and transportation facilities
20 vital to the economic health of California.

21 (i) A Sacramento-San Joaquin Delta Conservancy can support
22 efforts that advance both environmental protection and the
23 economic well-being of Delta residents in a complementary
24 manner, including all of the following:

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

26 (2) Protect and preserve Delta agriculture and working
27 landscapes.

28 (3) Provide increased opportunities for tourism and recreation.

29 (4) Promote Delta legacy communities and economic vitality
30 in the Delta in coordination with the Delta Protection Commission.

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

34 (6) Protect and improve water quality.

35 (7) Assist the Delta regional economy through the operation of
36 the conservancy’s program.

37 (8) Identify priority projects and initiatives for which funding
38 is needed.

39 (9) Protect, conserve, and restore the region’s physical,
40 agricultural, cultural, historical, and living resources.

1 (10) Assist local entities in the implementation of their habitat
2 conservation plans (HCPs) and natural community conservation
3 plans (NCCPs).

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

9 (12) Promote environmental education.

10

11 CHAPTER 2. DEFINITIONS

12

13 32310. For the purposes of this division, the following terms
14 have the following meanings:

15 (a) “Board” means the governing board of the Sacramento-San
16 Joaquin Delta Conservancy.

17 (b) “Conservancy” means the Sacramento-San Joaquin Delta
18 Conservancy.

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

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

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

25 (f) “Nonprofit organization” means a private, nonprofit
26 organization that qualifies for exempt status under Section
27 501(c)(3) of Title 26 of the United States Code and that has among
28 its principal charitable purposes preservation of land for scientific,
29 recreational, scenic, or open-space opportunities, protection of the
30 natural environment, preservation or enhancement of wildlife,
31 preservation of cultural and historical resources, or efforts to
32 provide for the enjoyment of public lands.

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

35

36 CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

37

38 32320. There is in the Natural Resources Agency the
39 Sacramento-San Joaquin Delta Conservancy, which is created as

1 a state agency to work in collaboration and cooperation with local
2 governments and interested parties.

3 32322. (a) The conservancy shall act as a primary state agency
4 to implement ecosystem restoration in the Delta.

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

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

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

11 (3) Provide increased opportunities for tourism and recreation
12 in the Delta.

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

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

18 (6) Protect and improve water quality.

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

21 (8) Identify priority projects and initiatives for which funding
22 is needed.

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

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

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

36 (12) Promote environmental education through grant funding.

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

CHAPTER 4. GOVERNING BOARD

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

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

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

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

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

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

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

(6) One member of the board or a designee who is appointed by the Solano County Board of Supervisors, who is a resident of that county.

(7) One member of the board or a designee who is appointed by the Yolo County Board of Supervisors, who is a resident of that county.

(8) Two public members appointed by the Governor, subject to confirmation by the Senate.

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

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

(b) The two nonvoting members shall consist of a Member of the Senate, appointed by the Senate Committee on Rules, and a Member of the Assembly, appointed by the Speaker of the Assembly. The members appointed under this subdivision shall meet with the conservancy and participate in its activities to the extent that this participation is not incompatible with their positions as Members of the Legislature. The appointed members shall represent a district that encompasses a portion of the Delta.

(c) Ten liaison advisers who shall serve in an advisory, nonvoting capacity shall consist of all of the following:

1 (1) One representative of the United States Fish and Wildlife
2 Service, designated by the United States Secretary of the Interior.

3 (2) One representative of the United States National Marine
4 Fisheries Service, designated by the United States Secretary of the
5 Interior.

6 (3) One representative of the United States Bureau of
7 Reclamation, designated by the United States Secretary of the
8 Interior.

9 (4) One representative of the United States Army Corps of
10 Engineers, designated by the Commanding Officer, United States
11 Army Corps of Engineers, South Pacific Division.

12 (5) A designee of the San Francisco Bay Conservation and
13 Development Commission for coordination purposes.

14 (6) A designee of the State Coastal Conservancy for coordination
15 purposes.

16 (7) A designee of the Suisun Resource Conservation District
17 for coordination purposes.

18 (8) A designee of the Central Valley Flood Protection Board.

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

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

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

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

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

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

30 (h) Alternates may be appointed by the county boards of
31 supervisors.

32 32332. Annually, the voting members of the board shall elect
33 from among the voting members a chairperson and vice
34 chairperson, and other officers as necessary. If the office of the
35 chairperson or vice chairperson becomes vacant, a new chairperson
36 or vice chairperson shall be elected by the voting members of the
37 board to serve for the remainder of the term. The chairperson shall
38 be selected from among the members specified in paragraphs (3)
39 to (7), inclusive, of subdivision (a) of Section 32330.

1 32334. A majority of the voting members shall constitute a
2 quorum for the transaction of the business of the conservancy. The
3 board shall not transact the business of the conservancy if a quorum
4 is not present at the time a vote is taken. A decision of the board
5 requires an affirmative vote of six of the voting membership, and
6 the vote is binding with respect to all matters acted on by the
7 conservancy.

8 32336. The board shall adopt rules and procedures for the
9 conduct of business by the conservancy.

10 32338. The board may establish advisory boards or committees,
11 hold community meetings, and engage in public outreach.

12 32340. The board shall establish and maintain a headquarters
13 office within the Delta. The conservancy may rent or own real and
14 personal property and equipment pursuant to applicable statutes
15 and regulations.

16 32342. The board shall determine the qualifications of, and
17 shall appoint, an executive officer of the conservancy, who shall
18 be exempt from civil service. The board shall employ other staff
19 as necessary to execute the powers and functions provided for in
20 this division.

21 32344. The board may enter into contracts with private entities
22 and public agencies to procure consulting and other services
23 necessary to achieve the purposes of this division.

24 32346. The conservancy's expenses for support and
25 administration may be paid from the conservancy's operating
26 budget and any other funding sources available to the conservancy.

27 32348. The board shall conduct business in accordance with
28 the Bagley-Keene Open Meeting Act (Article 9 (commencing with
29 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
30 the Government Code).

31 32350. The board shall hold its regular meetings within the
32 Delta or the City of Rio Vista.

33

34 CHAPTER 5. POWERS, DUTIES, AND LIMITATIONS

35

36 32360. (a) Except as specified in Section 32360.5, the
37 jurisdiction and activities of the conservancy are limited to the
38 Delta and Suisun Marsh.

39 (b) (1) The Sacramento-San Joaquin Delta Conservancy Fund
40 is hereby created in the State Treasury. Moneys in the fund shall

1 be available, upon appropriation by the Legislature, only for the
2 purposes of this division.

3 (2) Funds provided for ecosystem restoration and enhancement
4 shall be available for ecosystem restoration projects consistent
5 with the conservancy's strategic plan adopted pursuant to Section
6 32376.

7 (3) Funds may be allocated to a separate program within the
8 conservancy for economic sustainability in the Delta. The economic
9 sustainability plan adopted pursuant to Section 29759 shall be the
10 basis for the program. Funds provided to the conservancy to
11 implement ecosystem restoration projects pursuant to the Bay
12 Delta Conservation Plan shall only be used for ecosystem
13 restoration purposes.

14 32360.5. In furtherance of the conservancy's role in
15 implementing the Delta Plan, the conservancy may take or fund
16 an action outside the Delta and Suisun Marsh if the board makes
17 all of the following findings:

18 (a) The project implements the ecosystem goals of the Delta
19 Plan.

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

22 (c) The conservancy has given notice to and reviewed any
23 comments received from affected local jurisdictions and the Delta
24 Protection Commission.

25 (d) The conservancy has given notice to and reviewed any
26 comments received from any state conservancy where the project
27 is located.

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

29 32362. The conservancy may engage in partnerships with
30 nonprofit organizations, local public agencies, and landowners.

31 32363. In implementing this division, the conservancy shall
32 cooperate and consult with the city or county in which a grant is
33 proposed to be expended or an interest in real property is proposed
34 to be acquired, and shall, as necessary or appropriate, coordinate
35 its efforts with other state agencies, in cooperation with the
36 Secretary of the Natural Resources Agency. The conservancy shall,
37 as necessary or appropriate, cooperate and consult with a public
38 water system, levee, flood control, or drainage agency that owns
39 or operates facilities, including lands appurtenant thereto, where

1 a grant is proposed to be expended or an interest in land is proposed
2 to be acquired.

3 32364. (a) The conservancy may require a grantee to enter
4 into an agreement with the conservancy on terms and conditions
5 specified by the conservancy.

6 (b) The conservancy may require a cost-share or local funding
7 requirement for a grant. The conservancy may make that cost-share
8 or local funding requirement contingent upon the total amount of
9 funding available, the fiscal resources of the applicant, or urgency
10 of the project. The conservancy may waive cost-share requirements.

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

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

17 (e) The conservancy may require any funds that exceed the costs
18 of eligible or approved projects or of acquisition to be returned to
19 the conservancy, to be available for expenditure when appropriated
20 by the Legislature.

21 32364.5. (a) The conservancy may provide grants and loans
22 to state agencies, local public agencies, and nonprofit organizations
23 to further the goals of the conservancy.

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

- 27 (1) The intended use of the property.
- 28 (2) The manner in which the land will be managed.
- 29 (3) How the cost of ongoing operations, maintenance, and
30 management will be provided, including an analysis of the
31 maintaining entity’s financial capacity to support those ongoing
32 costs.
- 33 (4) Grantees shall demonstrate, where applicable, how they will
34 provide payments in lieu of taxes, assessments, or charges
35 otherwise due to local government.

36 32365. The conservancy may sue and be sued.

37 32366. (a) The conservancy may acquire from willing sellers
38 or transferors interests in real property and improve, lease, or
39 transfer interests in real property, in order to carry out the purposes
40 of this division.

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

3 32368. The conservancy may enter into an agreement with a
4 public agency, nonprofit organization, or private entity for the
5 construction, management, or maintenance of facilities authorized
6 by the conservancy.

7 32370. The conservancy shall not exercise the power of eminent
8 domain.

9 32372. (a) The conservancy may pursue and accept funds from
10 various sources, including, but not limited to, federal, state, and
11 local funds or grants, gifts, donations, bequests, devises,
12 subventions, grants, rents, royalties, or other assistance and funds
13 from public and private sources.

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

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

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

18 32376. Within two years of hiring an executive officer, the
19 board shall prepare and adopt a strategic plan to achieve the goals
20 of the conservancy. The plan shall describe its interaction with
21 local, regional, state, and federal land use, recreation, water and
22 flood management, and habitat conservation and protection efforts
23 within and adjacent to the Delta. The strategic plan shall establish
24 priorities and criteria for projects and programs, based upon an
25 assessment of program requirements, institutional capabilities, and
26 funding needs throughout the Delta. The strategic plan shall be
27 consistent with the Delta Plan, the Delta Protection Commission's
28 resources management plan, the Central Valley Flood Protection
29 Plan, the Suisun Marsh Preservation Act of 1977 (Division 19
30 (commencing with Section 29000)), and the Habitat Management,
31 Preservation and Restoration Plan for the Suisun Marsh.

32 32378. (a) The conservancy may expend funds and award
33 grants and loans to facilitate collaborative planning efforts and to
34 develop projects and programs that are designed to further the
35 purposes of this division.

36 (b) The conservancy may provide and make available technical
37 information, expertise, and other nonfinancial assistance to public
38 agencies, nonprofit organizations, and tribal organizations, to
39 support program and project development and implementation.

1 32380. The conservancy may acquire water or water rights to
2 support the goals of the conservancy.

3 32381. This division does not grant to the conservancy any of
4 the following:

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

6 (b) The power to regulate any activities on land, except as the
7 owner of an interest in the land, or pursuant to an agreement with,
8 or a license or grant of management authority from, the owner of
9 an interest in the land.

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

11 SEC. 38. Division 26.4 (commencing with Section 79400) of
12 the Water Code is repealed.

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

15

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

18

19 PART 1. GENERAL PROVISIONS

20

21 CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

22

23 85000. This division shall be known, and may be cited, as the
24 Sacramento-San Joaquin Delta Reform Act of 2009.

25 85001. The Legislature finds and declares all of the following:

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

31 (b) In response to the Delta crisis, the Legislature and the
32 Governor required development of a new long-term strategic vision
33 for managing the Delta. The Governor appointed a Blue Ribbon
34 Task Force to recommend a new “Delta Vision Strategic Plan” to
35 his cabinet committee, which, in turn, made recommendations for
36 a Delta Vision to the Governor and the Legislature on January 3,
37 2009.

38 (c) By enacting this division, it is the intent of the Legislature
39 to provide for the sustainable management of the Sacramento-San
40 Joaquin Delta ecosystem, to provide for a more reliable water

1 supply for the state, to protect and enhance the quality of water
2 supply from the Delta, and to establish a governance structure that
3 will direct efforts across state agencies to develop a legally
4 enforceable Delta Plan.

5 85002. The Legislature finds and declares that the
6 Sacramento-San Joaquin Delta, referred to as “the Delta” in this
7 division, is a critically important natural resource for California
8 and the nation. It serves Californians concurrently as both the hub
9 of the California water system and the most valuable estuary and
10 wetland ecosystem on the west coast of North and South America.

11 85003. The Legislature finds and declares all of the following:

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

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

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

36 85004. The Legislature finds and declares all of the following:

37 (a) The economies of major regions of the state depend on the
38 ability to use water within the Delta watershed or to import water
39 from the Delta watershed. More than two-thirds of the residents

1 of the state and more than two million acres of highly productive
2 farm land receive water exported from the Delta watershed.

3 (b) Providing a more reliable water supply for the state involves
4 implementation of water use efficiency and conservation projects,
5 wastewater reclamation projects, desalination, and new and
6 improved infrastructure, including water storage and Delta
7 conveyance facilities.

8

9

CHAPTER 2. DELTA POLICY

10

11 85020. The policy of the State of California is to achieve the
12 following objectives that the Legislature declares are inherent in
13 the coequal goals for management of the Delta:

14 (a) Manage the Delta’s water and environmental resources and
15 the water resources of the state over the long term.

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

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

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

22 (e) Improve water quality to protect human health and the
23 environment consistent with achieving water quality objectives in
24 the Delta.

25 (f) Improve the water conveyance system and expand statewide
26 water storage.

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

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

33 85021. The policy of the State of California is to reduce reliance
34 on the Delta in meeting California’s future water supply needs
35 through a statewide strategy of investing in improved regional
36 supplies, conservation, and water use efficiency. Each region that
37 depends on water from the Delta watershed shall improve its
38 regional self-reliance for water through investment in water use
39 efficiency, water recycling, advanced water technologies, local

1 and regional water supply projects, and improved regional
2 coordination of local and regional water supply efforts.

3 85022. (a) It is the intent of the Legislature that state and local
4 land use actions identified as “covered actions” pursuant to Section
5 85058.5 85057.5 be consistent with the Delta Plan. This section’s
6 findings, policies, and goals apply to Delta land use planning and
7 development.

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

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

13 (1) The Delta is a distinct and valuable natural resource of vital
14 and enduring interest to all the people and exists as a delicately
15 balanced estuary and wetland ecosystem of hemispheric
16 importance.

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

20 (3) To promote the public safety, health, and welfare, and to
21 protect public and private property, wildlife, fisheries, and the
22 natural environment, it is necessary to protect and enhance the
23 ecosystem of the Delta and prevent its further deterioration and
24 destruction.

25 (4) Existing developed uses, and future developments that are
26 carefully planned and developed consistent with the policies of
27 this division, are essential to the economic and social well-being
28 of the people of this state and especially to persons living and
29 working in the Delta.

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

32 (1) Protect, maintain, enhance, and, where feasible, restore the
33 overall quality of the Delta environment and its natural and
34 artificial resources.

35 (2) Ensure the utilization and conservation of Delta resources,
36 taking into account the social and economic needs of the people
37 of the state.

38 (3) Maximize public access to Delta resources and maximize
39 public recreational opportunities in the Delta consistent with sound

1 resources conservation principles and constitutionally protected
2 rights of private property owners.

3 (4) Encourage state and local initiatives and cooperation in
4 preparing procedures to implement coordinated planning and
5 development for mutually beneficial uses, including educational
6 uses, in the Delta.

7 (5) Develop new or improved aquatic and terrestrial habitat and
8 protect existing habitats to advance the goal of restoring and
9 enhancing the Delta ecosystem.

10 (6) Improve water quality to protect human health and the
11 environment consistent with achieving water quality objectives in
12 the Delta.

13 85023. The longstanding constitutional principle of reasonable
14 use and the public trust doctrine shall be the foundation of state
15 water management policy and are particularly important and
16 applicable to the Delta.

17

18 CHAPTER 3. MISCELLANEOUS PROVISIONS

19

20 85031. (a) This division does not diminish, impair, or
21 otherwise affect in any manner whatsoever any area of origin,
22 watershed of origin, county of origin, or any other water rights
23 protections, including, but not limited to, rights to water
24 appropriated prior to December 19, 1914, provided under the law.
25 This division does not limit or otherwise affect the application of
26 Article 1.7 (commencing with Section 1215) of Chapter 1 of Part
27 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461,
28 11462, and 11463, and Sections 12200 to 12220, inclusive.

29 (b) Nothing in this division supersedes, limits, or otherwise
30 modifies the applicability of Chapter 10 (commencing with Section
31 1700) of Part 2 of Division 2, including petitions related to any
32 new conveyance constructed or operated in accordance with
33 Chapter 2 (commencing with Section 85320) of Part 4.

34 (c) Unless otherwise expressly provided, nothing in this division
35 supersedes, reduces, or otherwise affects existing legal protections,
36 both procedural and substantive, relating to the board’s regulation
37 of diversion and use of water, including, but not limited to, the
38 protection provided to municipal interests by Sections 106 and
39 106.5, and changes in water rights. Nothing in this division expands
40 or otherwise alters the board’s existing authority to regulate the

1 diversion and use of water or the courts' existing concurrent
2 jurisdiction over California water rights.

3 85032. This division does not affect any of the following:

4 (a) The Natural Community Conservation Planning Act (Chapter
5 10 (commencing with Section 2800) of Division 3 of the Fish and
6 Game Code).

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

10 (c) The Fish and Game Code.

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

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

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

17 (g) Section 1702.

18 (h) The application of the public trust doctrine.

19 (i) Any water right.

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

22 85034. (a) (1) The council shall administer all contracts,
23 grants, easements, and agreements made or entered into by the
24 California Bay-Delta Authority under Division 26.4 (commencing
25 with Section 79400), as that division read on December 31, 2009.

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

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

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

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

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

3 (d) The council shall assume from the California Bay-Delta
4 Authority all responsibility to manage, in accordance with Chapter
5 5 (commencing with Section 85280) of Part 3, the science program
6 element that was required to be undertaken by Division 26.4
7 (commencing with Section 79400).

8 (e) Consistent with the responsibilities and duties assumed by
9 the council pursuant to this section, all staff, resources, and funding
10 within the Natural Resources Agency and the Department of
11 Forestry and Fire Protection for the support of the CALFED
12 Bay-Delta Program are hereby transferred to, and may be expended
13 for the purposes of, the council. The executive officer of the council
14 shall confer with the Director of Fish and Game, the director of
15 the department, and the executive director of the board regarding
16 possible reallocation of the staff and resources. The status, position,
17 and rights of any officer or employee shall not be affected by this
18 transfer and all officers and employees shall be retained pursuant
19 to the State Civil Service Act (Part 2 (commencing with Section
20 18500) of Division 5 of Title 2 of the Government Code).

21
22 CHAPTER 4. DEFINITIONS
23

24 85050. Unless the context otherwise requires, the definitions
25 set forth in this chapter govern the construction of this division.

26 85051. “Acquisition” means the acquisition of a fee interest
27 or any other interest, including easements, leases, and development
28 rights.

29 85052. “Adaptive management” means a framework and
30 flexible decisionmaking process for ongoing knowledge
31 acquisition, monitoring, and evaluation leading to continuous
32 improvement in management planning and implementation of a
33 project to achieve specified objectives.

34 85053. “Bay Delta Conservation Plan” or “BDCP” means a
35 multispecies conservation plan.

36 85054. “Coequal goals” means the two goals of providing a
37 more reliable water supply for California and protecting, restoring,
38 and enhancing the Delta ecosystem. The coequal goals shall be
39 achieved in a manner that protects and enhances the unique cultural,

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

3 85055. “Commission” means the Delta Protection Commission
4 established in Division 19.5 (commencing with Section 29700) of
5 the Public Resources Code.

6 85056. “Conservancy” means the Sacramento-San Joaquin
7 Delta Conservancy established in Section 32320 of the Public
8 Resources Code.

9 85057. “Council” means the Delta Stewardship Council
10 established in Section 85200.

11 85057.5. (a) “Covered action” means a plan, program, ~~project,~~
12 ~~or activity that meets all of the following conditions:~~ *or project as*
13 *defined pursuant to Section 21065 of the Public Resources Code*
14 *that meets all of the following conditions:*

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

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

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

20 (4) Will have a significant impact on achievement of one or
21 both of the coequal goals or the implementation of
22 government-sponsored flood control programs to reduce risks to
23 people, property, and state interests in the Delta.

24 (b) “Covered action” does not include any of the following:

25 (1) A regulatory action of a state agency.

26 (2) Routine maintenance and operation of the State Water
27 Project or the federal Central Valley Project.

28 (3) Regional transportation plans prepared pursuant to Section
29 65080 of the Government Code.

30 (4) Any plan, program, project, or activity within the secondary
31 zone of the Delta that the applicable metropolitan planning
32 organization under Section 65080 of the Government Code has
33 determined is consistent with either a sustainable communities
34 strategy or an alternative planning strategy that the State Air
35 Resources Board has determined would, if implemented, achieve
36 the greenhouse gas emission reduction targets established by that
37 board pursuant to subparagraph (A) of paragraph (2) of subdivision
38 (b) of Section 65080 of the Government Code. For purposes of
39 this paragraph, “consistent with” means consistent with the use
40 designation, density, building intensity, transportation plan, and

1 applicable policies specified for the area in the sustainable
2 communities strategy or the alternative planning strategy, as
3 applicable, and any infrastructure necessary to support the plan,
4 program, project, or activity.

5 (5) Routine maintenance and operation of any facility located,
6 in whole or in part, in the Delta, that is owned or operated by a
7 local public agency.

8 (6) Any plan, program, project, or activity that occurs, in whole
9 or in part, in the Delta, if both of the following conditions are met:

10 (A) The plan, program, project, or activity is undertaken by a
11 local public agency that is located, in whole or in part, in the Delta.

12 (B) Either a notice of determination is filed, pursuant to Section
13 21152 of the Public Resources Code, for the plan, program, project,
14 or activity by, or the plan, program, project, or activity is fully
15 permitted by, September 30, 2009.

16 (7) (A) *Any project within the secondary zone, as defined*
17 *pursuant to Section 29731 of Public Resources Code as of January*
18 *1, 2009, for which a notice of approval or determination pursuant*
19 *to Section 21152 of the Public Resources Code has been filed*
20 *before the date on which the Delta Plan becomes effective.*

21 (B) *Any project for which a notice of approval or determination*
22 *is filed on or after the date on which the final Bay Delta*
23 *Conservation Plan becomes effective, and before the date on which*
24 *the Delta Plan becomes effective, is not a covered action but shall*
25 *be consistent with the Bay Delta Conservation Plan.*

26 (C) *Subparagraphs (A) and (B) do not apply to either of the*
27 *following:*

28 (i) *Any project that is within a Restoration Opportunity Area*
29 *as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy*
30 *of the Bay Delta Conservation Plan, August 3, 2009, or as shown*
31 *in a final Bay Delta Conservation Plan.*

32 (ii) *Any project that is within the alignment of a conveyance*
33 *facility as shown in Figures 1 to 5, inclusive, of the Final Draft*
34 *Initial Assessment of Dual Delta Water Conveyance Report, April*
35 *23, 2008, and in future revisions of this document by the*
36 *department.*

37 (c) *Nothing in the application of this section shall be interpreted*
38 *to authorize the abrogation of any vested right whether created*
39 *by statute or by common law.*

1 85058. “Delta” means the Sacramento-San Joaquin Delta as
2 defined in Section 12220 and the Suisun Marsh, as defined in
3 Section 29101 of the Public Resources Code.

4 85059. “Delta Plan” means the comprehensive, long-term
5 management plan for the Delta as adopted by the council in
6 accordance with this division.

7 85060. “Delta watershed” means the Sacramento River
8 Hydrologic Region and the San Joaquin River Hydrologic Region
9 as described in the department’s Bulletin No. 160-05.

10 85064. “Public water agency” means a public entity, as defined
11 in Section 514, that provides water service, as defined in Section
12 515.

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

19 85067. “Strategic Plan” means both the “Delta Vision Strategic
20 Plan” issued by the Delta Vision Blue Ribbon Task Force on
21 October 17, 2008, and the “Delta Vision Implementation Report”
22 adopted by the Delta Vision Committee and dated December 31,
23 2008.

24
25 **PART 2. EARLY ACTIONS**
26

27 85080. The council shall appoint a Delta Independent Science
28 Board in accordance with Section 85280.

29 85082. The council shall develop and implement a strategy to
30 appropriately engage participation of the federal agencies with
31 responsibilities in the Delta. This strategy shall include engaging
32 these federal agencies to develop the Delta Plan consistent with
33 the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec.
34 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251
35 et seq.), and Section 8 of the federal Reclamation Act of 1902.

36 85084. The council shall develop an interim plan that includes
37 recommendations for early actions, projects, and programs.

38 85084.5. The Department of Fish and Game, in consultation
39 with the United States Fish and Wildlife Service and the National
40 Marine Fisheries Service and based on the best available science,

1 shall develop and recommend to the board Delta flow criteria and
2 quantifiable biological objectives for aquatic and terrestrial species
3 of concern dependent on the Delta. The recommendations shall
4 be developed no later than 12 months after the date of enactment
5 of this division.

6 85085. The department shall do all of the following:

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

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

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

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

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

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

26 (c) (1) For the purpose of informing planning decisions for the
27 Delta Plan and the Bay Delta Conservation Plan, the board shall,
28 pursuant to its public trust obligations, develop new flow criteria
29 for the Delta ecosystem necessary to protect public trust resources.
30 In carrying out this section, the board shall review existing water
31 quality objectives and use the best available scientific information.
32 The flow criteria for the Delta ecosystem shall include the volume,
33 quality, and timing of water necessary for the Delta ecosystem
34 under different conditions. The flow criteria shall be developed in
35 a public process by the board within nine months of the enactment
36 of this division. The public process shall be in the form of an
37 informational proceeding conducted pursuant to Article 3
38 (commencing with Section 649) of Chapter 1.5 of Division 3 of
39 Title 23 of the California Code of Regulations, and shall provide
40 an opportunity for all interested persons to participate. The flow

1 criteria shall not be considered predecisional with regard to any
2 subsequent board consideration of a permit, including any permit
3 in connection with a final BDCP.

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

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

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

24 (e) The board shall submit its flow criteria determinations
25 pursuant to this section to the council for its information within
26 30 days of completing the determinations.

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

36 85088. Until the board issues an order approving a change in
37 the point of diversion of the State Water Project and the federal
38 Central Valley Project from the southern Delta to a point on the
39 Sacramento River as specified in subdivision (c) of Section 85086,
40 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 the
 8 following:

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

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

18

19

PART 3. DELTA GOVERNANCE

20

21

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

22

23 85200. (a) The Delta Stewardship Council is hereby established
 24 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
 35 of the council that serve an initial term of one or two years may
 36 be immediately appointed to a subsequent full four-year term.
 37 following the end of his or her term.

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

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

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

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

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

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

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

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

23 85201. (a) The chairperson shall serve full time. Other
24 members shall serve one-third time. The council may select a vice
25 chairperson and other officers determined to be necessary.

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

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

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

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

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

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

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

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

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

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

12

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

15

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

17 (a) To sue or be sued.

18 (b) To enter into contracts.

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

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

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

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

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

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

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

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

38 (k) To hold hearings in all parts of the state necessary to carry
39 out the powers vested in it, and for those purposes has the powers
40 conferred upon the heads of state departments pursuant to Article

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

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

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

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

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

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

1 60 days prior to the adoption of a final regional transportation plan,
 2 the metropolitan planning organization shall provide the council
 3 with a draft sustainable communities strategy and an alternative
 4 planning strategy, if any. Concurrently, the metropolitan planning
 5 organization shall provide notice of its submission to the council
 6 in the same manner in which agencies file a certificate of
 7 consistency pursuant to Section 85225. If the council concludes
 8 that the draft sustainable communities strategy or alternative
 9 planning strategy is inconsistent with the Delta Plan, the council
 10 shall provide written notice of the claimed inconsistency to the
 11 metropolitan planning organization no later than 30 days prior to
 12 the adoption of the final regional transportation plan. If the council
 13 provides timely notice of a claimed inconsistency, the metropolitan
 14 planning organization’s adoption of the final regional transportation
 15 plan shall include a detailed response to the council’s notice.

16

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

19

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

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

28 85225.10. (a) Any person who claims that a proposed covered
 29 action is inconsistent with the Delta Plan and, as a result of that
 30 inconsistency, the action will have a significant adverse impact on
 31 the achievement of one or both of the coequal goals or
 32 implementation of government-sponsored flood control programs
 33 to reduce risks to people and property in the Delta, may file an
 34 appeal with regard to a certification of consistency submitted to
 35 the council.

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

1 amplify, correct, or otherwise supplement the information
2 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 control
7 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 the
22 certification of consistency is not supported by substantial evidence
23 in the record before the state or local public agency that filed the
24 certification. Upon remand, the state or local agency may determine
25 whether to proceed with the covered action. If the agency decides
26 to proceed with the action or with the action as modified to respond
27 to the findings of the council, the agency shall, prior to proceeding
28 with the action, file a revised certification of consistency that
29 addresses each of the findings made by the council and file that
30 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
 8 a water right permit or license, authority to approve temporary
 9 urgency changes pursuant to Chapter 6.6 (commencing with section
 10 1435) of Part 2 of Division 2, and authority to issue a notice of
 11 proposed cease and desist order or administrative civil liability
 12 complaint. The Delta Watermaster’s authority shall be limited to
 13 diversions in the Delta and the application and enforcement of the
 14 board’s requirements that apply to conditions in the Delta.

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

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

27

28 CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA
 29 SCIENCE PROGRAM

30

31 85280. (a) The Delta Independent Science Board is hereby
 32 established in state government.

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

37 (2) Members of the Delta Independent Science Board shall be
 38 nationally or internationally prominent scientists with appropriate
 39 expertise to evaluate the broad range of scientific programs that
 40 support adaptive management of the Delta. The members shall not

1 be directly affiliated with a program or agency subject to the review
2 activities of the Delta Independent Science Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

10

11 PART 4. COMPREHENSIVE DELTA PLANNING

12

13 CHAPTER 1. THE DELTA PLAN

14

15 85300. (a) On or before January 1, 2012, the council shall
 16 develop, adopt, and commence implementation of the Delta Plan
 17 pursuant to this part that furthers the coequal goals. The Delta Plan
 18 shall include subgoals and strategies to assist in guiding state and
 19 local agency actions related to the Delta. In developing the Delta
 20 Plan, the council shall consider each of the strategies and actions
 21 set forth in the Strategic Plan and may include any of those
 22 strategies or actions in the Delta Plan. The Delta Plan may also
 23 identify specific actions that state or local agencies may take to
 24 implement the subgoals and strategies.

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

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

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

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

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

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

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

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

9 85301. (a) The commission shall develop, for consideration
10 and incorporation into the Delta Plan by the council, a proposal to
11 protect, enhance, and sustain the unique cultural, historical,
12 recreational, agricultural, and economic values of the Delta as an
13 evolving place, in a manner consistent with the coequal goals. For
14 the purpose of carrying out this subdivision, the commission may
15 include in the proposal the relevant strategies described in the
16 Strategic Plan.

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

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

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

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

37 (2) The Department of Food and Agriculture shall prepare a
38 proposal, for submission to the commission, to establish market
39 incentives and infrastructure to protect and enhance the economic
40 and public values of Delta agriculture.

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

7 85302. (a) The implementation of the Delta Plan shall further
8 the restoration of the Delta ecosystem and a reliable water supply.

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

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

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

17 (2) Functional corridors for migratory species.

18 (3) Diverse and biologically appropriate habitats and ecosystem
19 processes.

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

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

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

26 (1) Meeting the needs for reasonable and beneficial uses of
27 water.

28 (2) Sustaining the economic vitality of the state.

29 (3) Improving water quality to protect human health and the
30 environment.

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

33 (1) Restore large areas of interconnected habitats within the
34 Delta and its watershed by 2100.

35 (2) Establish migratory corridors for fish, birds, and other
36 animals along selected Delta river channels.

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

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

3 (5) Improve water quality to meet drinking water, agriculture,
4 and ecosystem long-term goals.

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

8 (f) The council shall consider, for incorporation into the Delta
9 Plan, actions designed to implement the subgoals and strategies
10 described in subdivision (e).

11 (g) In carrying out this section, the council shall make use of
12 the best available science.

13 (h) The Delta Plan shall include recommendations regarding
14 state agency management of lands in the Delta.

15 85303. The Delta Plan shall promote statewide water
16 conservation, water use efficiency, and sustainable use of water.

17 85304. The Delta Plan shall promote options for new and
18 improved infrastructure relating to the water conveyance in the
19 Delta, storage systems, and for the operation of both to achieve
20 the coequal goals.

21 85305. (a) The Delta Plan shall attempt to reduce risks to
22 people, property, and state interests in the Delta by promoting
23 effective emergency preparedness, appropriate land uses, and
24 strategic levee investments.

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

29 85306. The council, in consultation with the Central Valley
30 Flood Protection Board, shall recommend in the Delta Plan
31 priorities for state investments in levee operation, maintenance,
32 and improvements in the Delta, including both levees that are a
33 part of the State Plan of Flood Control and nonproject levees.

34 85307. (a) The Delta Plan may identify actions to be taken
35 outside of the Delta, if those actions are determined to significantly
36 reduce flood risks in the Delta.

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

38 (c) The council, in consultation with the Department of
39 Transportation, may address in the Delta Plan the effects of climate

1 change and sea level rise on the three state highways that cross the
2 Delta.

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

8 85308. The Delta Plan shall meet all of the following
9 requirements:

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

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

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

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

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

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

25 85309. The department, in consultation with the United States
26 Army Corps of Engineers and the Central Valley Flood Protection
27 Board, shall prepare a proposal to coordinate flood and water
28 supply operations of the State Water Project and the federal Central
29 Valley Project, and submit the proposal to the council for
30 consideration for incorporation into the Delta Plan. In drafting the
31 proposal, the department shall consider all related actions set forth
32 in the Strategic Plan.

33

34 CHAPTER 2. BAY DELTA CONSERVATION PLAN

35

36 85320. (a) The Bay Delta Conservation Plan (BDCP) shall be
37 considered for inclusion in the Delta Plan in accordance with this
38 chapter.

1 (b) The BDCP shall not be incorporated into the Delta Plan and
2 the public benefits associated with the BDCP shall not be eligible
3 for state funding, unless the BDCP does all of the following:
4 (1) Complies with Chapter 10 (commencing with Section 2800)
5 of Division 3 of the Fish and Game Code.
6 (2) Complies with Division 13 (commencing with Section
7 21000) of the Public Resources Code, including a comprehensive
8 review and analysis of all of the following:
9 (A) A reasonable range of flow criteria, rates of diversion, and
10 other operational criteria required to satisfy the criteria for approval
11 of a natural community conservation plan as provided in
12 subdivision (a) of Section 2820 of the Fish and Game Code, and
13 other operational requirements and flows necessary for recovering
14 the Delta ecosystem and restoring fisheries under a reasonable
15 range of hydrologic conditions, which will identify the remaining
16 water available for export and other beneficial uses.
17 (B) A reasonable range of Delta conveyance alternatives,
18 including through-Delta, dual conveyance, and isolated conveyance
19 alternatives and including further capacity and design options of
20 a lined canal, an unlined canal, and pipelines.
21 (C) The potential effects of climate change, possible sea level
22 rise up to 55 inches, and possible changes in total precipitation
23 and runoff patterns on the conveyance alternatives and habitat
24 restoration activities considered in the environmental impact report.
25 (D) The potential effects on migratory fish and aquatic resources.
26 (E) The potential effects on Sacramento River and San Joaquin
27 River flood management.
28 (F) The resilience and recovery of Delta conveyance alternatives
29 in the event of catastrophic loss caused by earthquake or flood or
30 other natural disaster.
31 (G) The potential effects of each Delta conveyance alternative
32 on Delta water quality.
33 (c) The department shall consult with the council and the Delta
34 Independent Science Board during the development of the BDCP.
35 The council shall be a responsible agency in the development of
36 the environmental impact report. The Delta Independent Science
37 Board shall review the draft environmental impact report and
38 submit its comments to the council and the Department of Fish
39 and Game.

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

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

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

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

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

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

1 CHAPTER 3. OTHER PLANS FOR THE DELTA
2

3 85350. The council may incorporate other completed plans
4 related to the Delta into the Delta Plan to the extent that the other
5 plans promote the coequal goals.

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

16 (b) It is the intent of the Legislature to finance the activities of
17 the Delta Stewardship Council and the Sacramento-San Joaquin
18 Delta Conservancy from funds made available pursuant to the
19 Disaster Preparedness and Flood Prevention Bond Act of 2006
20 (Chapter 1.699 (commencing with Section 5096.800) of Division
21 5 of the Public Resources Code) and the Safe Drinking Water,
22 Water Quality and Supply, Flood Control, River and Coastal
23 Protection Bond Act of 2006 (Division 43 (commencing with
24 Section 75001) of the Public Resources Code).

25 SEC. 41. If the Commission on State Mandates determines
26 that this act contains costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.

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

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