

AMENDED IN ASSEMBLY NOVEMBER 3, 2009

AMENDED IN SENATE NOVEMBER 2, 2009

AMENDED IN SENATE OCTOBER 29, 2009

CALIFORNIA LEGISLATURE—2009–10 SEVENTH EXTRAORDINARY SESSION

**SENATE BILL**

**No. 1**

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**Introduced by Senators Simitian and Steinberg**

October 23, 2009

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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 85057.5 be consistent with the Delta Plan. This section’s findings,  
6 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 (b) *For the purposes of this division, an area that utilizes water*  
4 *that has been diverted and conveyed from the Sacramento River*  
5 *hydrologic region, for use outside the Sacramento River hydrologic*  
6 *region or the Delta, shall not be deemed to be immediately adjacent*  
7 *thereto or capable of being conveniently supplied with water*  
8 *therefrom by virtue of or on account of the diversion and conveyance*  
9 *of that water through facilities that may be constructed for that*  
10 *purpose after January 1, 2010.*

11 (c) *Nothing in this division supersedes, limits, or otherwise*  
12 *modifies the applicability of Chapter 10 (commencing with Section*  
13 *1700) of Part 2 of Division 2, including petitions related to any*  
14 *new conveyance constructed or operated in accordance with*  
15 *Chapter 2 (commencing with Section 85320) of Part 4 of Division*  
16 *35.*

17 (d) *Unless otherwise expressly provided, nothing in this division*  
18 *supersedes, reduces, or otherwise affects existing legal protections,*  
19 *both procedural and substantive, relating to the state board's*  
20 *regulation of diversion and use of water, including, but not limited*  
21 *to, water right priorities, the protection provided to municipal*  
22 *interests by Sections 106 and 106.5, and changes in water rights.*  
23 *Nothing in this division expands or otherwise alters the board's*  
24 *existing authority to regulate the diversion and use of water or the*  
25 *courts' existing concurrent jurisdiction over California water*  
26 *rights.*

27 85032. This division does not affect any of the following:

28 (a) The Natural Community Conservation Planning Act (Chapter  
29 10 (commencing with Section 2800) of Division 3 of the Fish and  
30 Game Code).

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

34 (c) The Fish and Game Code.

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

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

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

- 1 (g) Section 1702.
- 2 (h) The application of the public trust doctrine.
- 3 (i) Any water right.
- 4 (j) The liability of the state for flood protection in the Delta or
- 5 its watershed.
- 6 85034. (a) (1) The council shall administer all contracts,
- 7 grants, easements, and agreements made or entered into by the
- 8 California Bay-Delta Authority under Division 26.4 (commencing
- 9 with Section 79400), as that division read on December 31, 2009.
- 10 (2) The exercise of the authority described in paragraph (1) is
- 11 not subject to review or approval by the Department of General
- 12 Services.
- 13 (3) A contract, lease, license, or any other agreement to which
- 14 the California Bay-Delta Authority is a party is not void or voidable
- 15 as a result of the implementation of this subdivision, but shall
- 16 continue in full force and effect until the end of its term.
- 17 (b) The council shall be the successor to and shall assume from
- 18 the California Bay-Delta Authority all of the administrative rights,
- 19 abilities, obligations, and duties of that authority.
- 20 (c) The council shall have possession and control of all records,
- 21 papers, equipment, supplies, contracts, leases, agreements, and
- 22 other property, real or personal, connected with the administration
- 23 of Division 26.4 (commencing with Section 79400), as that division
- 24 read on December 31, 2009, or held for the benefit or use of the
- 25 California Bay-Delta Authority.
- 26 (d) The council shall assume from the California Bay-Delta
- 27 Authority all responsibility to manage, in accordance with Chapter
- 28 5 (commencing with Section 85280) of Part 3, the science program
- 29 element that was required to be undertaken by Division 26.4
- 30 (commencing with Section 79400).
- 31 (e) Consistent with the responsibilities and duties assumed by
- 32 the council pursuant to this section, all staff, resources, and funding
- 33 within the Natural Resources Agency and the Department of
- 34 Forestry and Fire Protection for the support of the CALFED
- 35 Bay-Delta Program are hereby transferred to, and may be expended
- 36 for the purposes of, the council. The executive officer of the council
- 37 shall confer with the Director of Fish and Game, the director of
- 38 the department, and the executive director of the board regarding
- 39 possible reallocation of the staff and resources. The status, position,
- 40 and rights of any officer or employee shall not be affected by this

1 transfer and all officers and employees shall be retained pursuant  
2 to the State Civil Service Act (Part 2 (commencing with Section  
3 18500) of Division 5 of Title 2 of the Government Code).

4  
5 CHAPTER 4. DEFINITIONS  
6

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

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

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

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

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

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

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

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

33 85057.5. (a) “Covered action” means a plan, program, or  
34 project as defined pursuant to Section 21065 of the Public  
35 Resources Code that meets all of the following conditions:

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

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

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

- 1 (4) Will have a significant impact on achievement of one or  
2 both of the coequal goals or the implementation of  
3 government-sponsored flood control programs to reduce risks to  
4 people, property, and state interests in the Delta.
- 5 (b) “Covered action” does not include any of the following:
- 6 (1) A regulatory action of a state agency.
- 7 (2) Routine maintenance and operation of the State Water  
8 Project or the federal Central Valley Project.
- 9 (3) Regional transportation plans prepared pursuant to Section  
10 65080 of the Government Code.
- 11 (4) Any plan, program, project, or activity within the secondary  
12 zone of the Delta that the applicable metropolitan planning  
13 organization under Section 65080 of the Government Code has  
14 determined is consistent with either a sustainable communities  
15 strategy or an alternative planning strategy that the State Air  
16 Resources Board has determined would, if implemented, achieve  
17 the greenhouse gas emission reduction targets established by that  
18 board pursuant to subparagraph (A) of paragraph (2) of subdivision  
19 (b) of Section 65080 of the Government Code. For purposes of  
20 this paragraph, “consistent with” means consistent with the use  
21 designation, density, building intensity, transportation plan, and  
22 applicable policies specified for the area in the sustainable  
23 communities strategy or the alternative planning strategy, as  
24 applicable, and any infrastructure necessary to support the plan,  
25 program, project, or activity.
- 26 (5) Routine maintenance and operation of any facility located,  
27 in whole or in part, in the Delta, that is owned or operated by a  
28 local public agency.
- 29 (6) Any plan, program, project, or activity that occurs, in whole  
30 or in part, in the Delta, if both of the following conditions are met:
- 31 (A) The plan, program, project, or activity is undertaken by a  
32 local public agency that is located, in whole or in part, in the Delta.
- 33 (B) Either a notice of determination is filed, pursuant to Section  
34 21152 of the Public Resources Code, for the plan, program, project,  
35 or activity by, or the plan, program, project, or activity is fully  
36 permitted by, September 30, 2009.
- 37 (7) (A) Any project within the secondary zone, as defined  
38 pursuant to Section 29731 of Public Resources Code as of January  
39 1, 2009, for which a notice of approval or determination pursuant



1 to Section 21152 of the Public Resources Code has been filed  
2 before the date on which the Delta Plan becomes effective.

3 (B) Any project for which a notice of approval or determination  
4 is filed on or after the date on which the final Bay Delta  
5 Conservation Plan becomes effective, and before the date on which  
6 the Delta Plan becomes effective, is not a covered action but shall  
7 be consistent with the Bay Delta Conservation Plan.

8 (C) Subparagraphs (A) and (B) do not apply to either of the  
9 following:

10 (i) Any project that is within a Restoration Opportunity Area  
11 as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy  
12 of the Bay Delta Conservation Plan, August 3, 2009, or as shown  
13 in a final Bay Delta Conservation Plan.

14 (ii) Any project that is within the alignment of a conveyance  
15 facility as shown in Figures 1 to 5, inclusive, of the Final Draft  
16 Initial Assessment of Dual Delta Water Conveyance Report, April  
17 23, 2008, and in future revisions of this document by the  
18 department.

19 (c) Nothing in the application of this section shall be interpreted  
20 to authorize the abrogation of any vested right whether created by  
21 statute or by common law.

22 85058. “Delta” means the Sacramento-San Joaquin Delta as  
23 defined in Section 12220 and the Suisun Marsh, as defined in  
24 Section 29101 of the Public Resources Code.

25 85059. “Delta Plan” means the comprehensive, long-term  
26 management plan for the Delta as adopted by the council in  
27 accordance with this division.

28 85060. “Delta watershed” means the Sacramento River  
29 Hydrologic Region and the San Joaquin River Hydrologic Region  
30 as described in the department’s Bulletin No. 160-05.

31 85064. “Public water agency” means a public entity, as defined  
32 in Section 514, that provides water service, as defined in Section  
33 515.

34 85066. “Restoration” means the application of ecological  
35 principles to restore a degraded or fragmented ecosystem and return  
36 it to a condition in which its biological and structural components  
37 achieve a close approximation of its natural potential, taking into  
38 consideration the physical changes that have occurred in the past  
39 and the future impact of climate change and sea level rise.

1 85067. “Strategic Plan” means both the “Delta Vision Strategic  
 2 Plan” issued by the Delta Vision Blue Ribbon Task Force on  
 3 October 17, 2008, and the “Delta Vision Implementation Report”  
 4 adopted by the Delta Vision Committee and dated December 31,  
 5 2008.

6  
 7 PART 2. EARLY ACTIONS  
 8

9 85080. The council shall appoint a Delta Independent Science  
 10 Board in accordance with Section 85280.

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

18 85084. The council shall develop an interim plan that includes  
 19 recommendations for early actions, projects, and programs.

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

28 85085. The department shall do all of the following:

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

34 (b) Evaluate the effectiveness of the Three Mile Slough Barrier  
 35 project.

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

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

1 85086. (a) The board shall establish an effective system of  
2 Delta watershed diversion data collection and public reporting by  
3 December 31, 2010.

4 (b) It is the intent of the Legislature to establish an accelerated  
5 process to determine instream flow needs of the Delta for the  
6 purposes of facilitating the planning decisions that are required to  
7 achieve the objectives of the Delta Plan.

8 (c) (1) For the purpose of informing planning decisions for the  
9 Delta Plan and the Bay Delta Conservation Plan, the board shall,  
10 pursuant to its public trust obligations, develop new flow criteria  
11 for the Delta ecosystem necessary to protect public trust resources.  
12 In carrying out this section, the board shall review existing water  
13 quality objectives and use the best available scientific information.  
14 The flow criteria for the Delta ecosystem shall include the volume,  
15 quality, and timing of water necessary for the Delta ecosystem  
16 under different conditions. The flow criteria shall be developed in  
17 a public process by the board within nine months of the enactment  
18 of this division. The public process shall be in the form of an  
19 informational proceeding conducted pursuant to Article 3  
20 (commencing with Section 649) of Chapter 1.5 of Division 3 of  
21 Title 23 of the California Code of Regulations, and shall provide  
22 an opportunity for all interested persons to participate. The flow  
23 criteria shall not be considered predecisional with regard to any  
24 subsequent board consideration of a permit, including any permit  
25 in connection with a final BDCP.

26 (2) Any order approving a change in the point of diversion of  
27 the State Water Project or the federal Central Valley Project from  
28 the southern Delta to a point on the Sacramento River shall include  
29 appropriate Delta flow criteria and shall be informed by the analysis  
30 conducted pursuant to this section. The flow criteria shall be subject  
31 to modification over time based on a science-based adaptive  
32 management program that integrates scientific and monitoring  
33 results, including the contribution of habitat and other conservation  
34 measures, into ongoing Delta water management.

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

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

7 (e) The board shall submit its flow criteria determinations  
8 pursuant to this section to the council for its information within  
9 30 days of completing the determinations.

10 85087. The board, by December 31, 2010, shall submit to the  
11 Legislature a prioritized schedule and estimate of costs to complete  
12 instream flow studies for the Delta and for high priority rivers and  
13 streams in the Delta watershed, not otherwise covered by Section  
14 85086, by 2012, and for all major rivers and streams outside the  
15 Sacramento River watershed by 2018. In developing this schedule,  
16 the board shall consult with the Department of Fish and Game as  
17 to the timing of its submission of recommendations for instream  
18 flow needs.

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

26 85089. Construction of a new Delta conveyance facility shall  
27 not be initiated until the persons or entities that contract to receive  
28 water from the State Water Project and the federal Central Valley  
29 Project or a joint powers authority representing those entities have  
30 made arrangements or entered into contracts to pay for both of the  
31 following:

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

37 (b) Full mitigation of property tax or assessments levied by local  
38 governments or special districts for land used in the construction,  
39 location, mitigation, or operation of new Delta conveyance  
40 facilities.

1 PART 3. DELTA GOVERNANCE

2  
3 CHAPTER 1. DELTA STEWARDSHIP COUNCIL

4  
5 85200. (a) The Delta Stewardship Council is hereby established  
6 as an independent agency of the state.

7 (b) (1) The council shall consist of seven voting members, of  
8 which four members shall be appointed by the Governor and  
9 confirmed by the Senate, one member shall be appointed by the  
10 Senate Committee on Rules, one member shall be appointed by  
11 the Speaker of the Assembly, and one member shall be the  
12 Chairperson of the Delta Protection Commission. Initial  
13 appointments to the council shall be made by July 1, 2010.

14 (2) No member of the council shall serve two consecutive terms,  
15 but a member may be reappointed after a period of two years  
16 following the end of his or her term.

17 (c) (1) (A) The initial terms of two of the four members  
18 appointed by the Governor shall be four years.

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

21 (C) The initial terms of the members appointed by the Senate  
22 Committee on Rules and the Speaker of the Assembly shall be  
23 four years.

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

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

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

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

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

1 85201. (a) The chairperson shall serve full time. Other  
2 members shall serve one-third time. The council may select a vice  
3 chairperson and other officers determined to be necessary.

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

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

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

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

12 (f) The number of employees and qualifications of those  
13 employees shall be determined by the council, subject to the  
14 availability of funds.

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

18 (h) All persons employed by the council are state employees,  
19 subject to the duties, responsibilities, limitations, and benefits of  
20 the state.

21 85202. Council members shall possess diverse expertise and  
22 reflect a statewide perspective.

23 85203. The headquarters of the council shall be located in  
24 Sacramento.

25 85204. The council shall establish and oversee a committee of  
26 agencies responsible for implementing the Delta Plan. Each agency  
27 shall coordinate its actions pursuant to the Delta Plan with the  
28 council and the other relevant agencies.

29  
30 CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE  
31 COUNCIL  
32

33 85210. The council has all of the following powers:

34 (a) To sue or be sued.

35 (b) To enter into contracts.

36 (c) To employ the services of public, nonprofit, and private  
37 entities.

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

39 (e) To employ its own legal staff or contract with other state or  
40 federal agencies for legal services, or both. The council may

1 employ special legal counsel with the approval of the Attorney  
2 General.

3 (f) To receive funds, including funds from private and local  
4 governmental sources, contributions from public and private  
5 sources, as well as state and federal appropriations.

6 (g) To disburse funds through grants, public assistance, loans,  
7 and contracts.

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

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

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

15 (k) To hold hearings in all parts of the state necessary to carry  
16 out the powers vested in it, and for those purposes has the powers  
17 conferred upon the heads of state departments pursuant to Article  
18 2 (commencing with Section 11180) of Chapter 2 of Part 1 of  
19 Division 3 of Title 2 of the Government Code. Any hearing by the  
20 council may be conducted by any member of the council, or other  
21 designee, upon authorization of the council, and he or she shall  
22 have the powers granted to the council by this section, provided  
23 that any final action of the council shall be taken by a majority of  
24 the membership of the council at a meeting duly called and held.

25 85210.5. A majority of the voting members of the council shall  
26 constitute a quorum for the transaction of the business of the  
27 council. A majority vote of the voting membership shall be required  
28 to take action with respect to any matter unless otherwise specified  
29 in this division. The vote of each member shall be individually  
30 recorded.

31 85211. The Delta Plan shall include performance measurements  
32 that will enable the council to track progress in meeting the  
33 objectives of the Delta Plan. The performance measurements shall  
34 include, but need not be limited to, quantitative or otherwise  
35 measurable assessments of the status and trends in all of the  
36 following:

37 (a) The health of the Delta's estuary and wetland ecosystem for  
38 supporting viable populations of aquatic and terrestrial species,  
39 habitats, and processes, including viable populations of Delta  
40 fisheries and other aquatic organisms.

1 (b) The reliability of California water supply imported from the  
 2 Sacramento River or the San Joaquin River watershed.  
 3 85212. The council shall review and provide timely advice to  
 4 local and regional planning agencies regarding the consistency of  
 5 local and regional planning documents, including sustainable  
 6 communities strategies and alternative planning strategies prepared  
 7 pursuant to Section 65080 of the Government Code, with the Delta  
 8 Plan. The council’s input shall include, but not be limited to,  
 9 reviewing the consistency of local and regional planning documents  
 10 with the ecosystem restoration needs of the Delta and reviewing  
 11 whether the lands set aside for natural resource protection are  
 12 sufficient to meet the Delta’s ecosystem needs. A metropolitan  
 13 planning organization preparing a regional transportation plan  
 14 under Section 65080 of the Government Code that includes land  
 15 within the primary or secondary zones of the Delta shall consult  
 16 with the council early in the planning process regarding the issues  
 17 and policy choices relating to the council’s advice. No later than  
 18 60 days prior to the adoption of a final regional transportation plan,  
 19 the metropolitan planning organization shall provide the council  
 20 with a draft sustainable communities strategy and an alternative  
 21 planning strategy, if any. Concurrently, the metropolitan planning  
 22 organization shall provide notice of its submission to the council  
 23 in the same manner in which agencies file a certificate of  
 24 consistency pursuant to Section 85225. If the council concludes  
 25 that the draft sustainable communities strategy or alternative  
 26 planning strategy is inconsistent with the Delta Plan, the council  
 27 shall provide written notice of the claimed inconsistency to the  
 28 metropolitan planning organization no later than 30 days prior to  
 29 the adoption of the final regional transportation plan. If the council  
 30 provides timely notice of a claimed inconsistency, the metropolitan  
 31 planning organization’s adoption of the final regional transportation  
 32 plan shall include a detailed response to the council’s notice.  
 33

34 CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC  
 35 AGENCY ACTIONS  
 36

37 85225. A state or local public agency that proposes to undertake  
 38 a covered action, prior to initiating the implementation of that  
 39 covered action, shall prepare a written certification of consistency



1 with detailed findings as to whether the covered action is consistent  
2 with the Delta Plan and shall submit that certification to the council.

3 85225.5. To assist state and local public agencies in preparing  
4 the required certification, the council shall develop procedures for  
5 early consultation with the council on the proposed covered action.

6 85225.10. (a) Any person who claims that a proposed covered  
7 action is inconsistent with the Delta Plan and, as a result of that  
8 inconsistency, the action will have a significant adverse impact on  
9 the achievement of one or both of the coequal goals or  
10 implementation of government-sponsored flood control programs  
11 to reduce risks to people and property in the Delta, may file an  
12 appeal with regard to a certification of consistency submitted to  
13 the council.

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

20 (c) The council, or by delegation the executive officer, may  
21 dismiss the appeal for failure of the appellant to provide  
22 information requested by the council within the period provided,  
23 if the information requested is in the possession or under the control  
24 of the appellant.

25 85225.15. The appeal shall be filed no later than 30 days after  
26 the submission of the certification of consistency. If no person  
27 appeals the certification of consistency, the state or local public  
28 agency may proceed to implement the covered action.

29 85225.20. The appeal shall be heard by the council within 60  
30 days of the date of the filing of the appeal, unless the council, or  
31 by delegation the executive officer, determines that the issue raised  
32 on appeal is not within the council's jurisdiction or does not raise  
33 an appealable issue. The council shall make its decision on the  
34 appeal within 60 days of hearing the appeal.

35 85225.25. After a hearing on an appealed action, the council  
36 shall make specific written findings either denying the appeal or  
37 remanding the matter to the state or local public agency for  
38 reconsideration of the covered action based on the finding that the  
39 certification of consistency is not supported by substantial evidence  
40 in the record before the state or local public agency that filed the

1 certification. Upon remand, the state or local agency may determine  
 2 whether to proceed with the covered action. If the agency decides  
 3 to proceed with the action or with the action as modified to respond  
 4 to the findings of the council, the agency shall, prior to proceeding  
 5 with the action, file a revised certification of consistency that  
 6 addresses each of the findings made by the council and file that  
 7 revised certification with the council.

8 85225.30. The council shall adopt administrative procedures  
 9 governing appeals, which shall be exempt from Chapter 3.5  
 10 (commencing with Section 11340) of Part 1 of Division 3 of Title  
 11 2 of the Government Code.

12  
 13 CHAPTER 4. DELTA WATERMASTER  
 14

15 85230. (a) The board, in consultation with the council, shall  
 16 appoint, for a term of four years, a special master for the Delta,  
 17 whose title shall be “the Delta Watermaster.”

18 ~~(b) The board shall adopt internal procedures delegating~~  
 19 ~~authority to the Delta Watermaster. The Delta Watermaster shall~~  
 20 ~~exercise the board’s authority to provide timely monitoring and~~  
 21 ~~enforcement of board orders and permit terms and conditions. The~~  
 22 ~~Delta Watermaster’s delegated authority shall include authority~~  
 23 ~~to require monitoring and reporting, authority for approvals~~  
 24 ~~delegated to an officer or employee of the board by the terms of~~  
 25 ~~a water right permit or license, authority to approve temporary~~  
 26 ~~urgency changes pursuant to Chapter 6.6 (commencing with section~~  
 27 ~~1435) of Part 2 of Division 2, and authority to issue a notice of~~  
 28 ~~proposed cease and desist order or administrative civil liability~~  
 29 ~~complaint. The Delta Watermaster’s authority shall be limited to~~  
 30 ~~diversions in the Delta and the application and enforcement of the~~  
 31 ~~board’s requirements that apply to conditions in the Delta.~~

32 *(b) The board shall adopt internal procedures delegating*  
 33 *authority to the Delta Watermaster. The Delta Watermaster shall*  
 34 *exercise the board’s authority to provide timely monitoring and*  
 35 *enforcement of board orders and license and permit terms and*  
 36 *conditions. The Delta Watermaster’s delegated authority shall*  
 37 *include authority to require monitoring and reporting, authority*  
 38 *for approvals delegated to an officer or employee of the board by*  
 39 *the terms of a water right permit or license, authority to approve*  
 40 *temporary urgency changes pursuant to Chapter 6.6 (commencing*

1 *with Section 1435) of Part 2 of Division 2, and authority to issue*  
 2 *a notice of proposed cease and desist order or administrative civil*  
 3 *liability complaint. The Delta Watermaster’s authority shall be*  
 4 *limited to diversions in the Delta, and for the monitoring and*  
 5 *enforcement of the board’s orders and license and permit terms*  
 6 *and conditions that apply to conditions in the Delta.*

7 (c) The internal procedures adopted by the board shall provide  
 8 for due process in adjudicative proceedings, and may establish  
 9 procedures for the issuance of a stay of any order or decision of  
 10 the Delta Watermaster for which a petition for reconsideration is  
 11 filed or reconsideration is ordered under Section 1122. The board  
 12 may provide any additional duties or needs of the Delta  
 13 Watermaster that the board deems necessary for effective  
 14 day-to-day enforcement of its decisions.

15 (d) The Delta Watermaster shall submit regular reports to the  
 16 board and the council including, but not limited to, reports on water  
 17 rights administration, water quality issues, and conveyance  
 18 operations.

19

20 CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA  
 21 SCIENCE PROGRAM

22

23 85280. (a) The Delta Independent Science Board is hereby  
 24 established in state government.

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

29 (2) Members of the Delta Independent Science Board shall be  
 30 nationally or internationally prominent scientists with appropriate  
 31 expertise to evaluate the broad range of scientific programs that  
 32 support adaptive management of the Delta. The members shall not  
 33 be directly affiliated with a program or agency subject to the review  
 34 activities of the Delta Independent Science Board.

35 (3) The Delta Independent Science Board shall provide oversight  
 36 of the scientific research, monitoring, and assessment programs  
 37 that support adaptive management of the Delta through periodic  
 38 reviews of each of those programs that shall be scheduled to ensure  
 39 that all Delta scientific research, monitoring, and assessment  
 40 programs are reviewed at least once every four years.

1 (4) The Delta Independent Science Board shall submit to the  
2 council a report on the results of each review, including  
3 recommendations for any changes in the programs reviewed by  
4 the board.  
5 (b) After consultation with the Delta Independent Science Board,  
6 the council shall appoint a lead scientist for the Delta Science  
7 Program.  
8 (1) The lead scientist shall meet all of the following  
9 qualifications:  
10 (A) Hold an advanced degree in a field related to water or  
11 ecosystem management.  
12 (B) Have a strong record of scientific research and publication  
13 in peer-reviewed scientific journals in a field related to water or  
14 ecosystem management.  
15 (C) Have experience advising high-level managers in  
16 science-based decisionmaking in the areas of water management  
17 and ecosystem restoration.  
18 (D) Have the capability to guide the application of an adaptive  
19 management process to resource management policy decisions in  
20 the Delta.  
21 (2) The term of office for the lead scientist shall be no more  
22 than three years. The lead scientist may serve no more than two  
23 terms.  
24 (3) The lead scientist shall oversee the implementation of the  
25 Delta Science Program. In carrying out that responsibility, the lead  
26 scientist shall regularly consult with the agencies participating in  
27 the program.  
28 (4) The mission of the Delta Science Program shall be to provide  
29 the best possible unbiased scientific information to inform water  
30 and environmental decisionmaking in the Delta. That mission shall  
31 be carried out through funding research, synthesizing and  
32 communicating scientific information to policymakers and  
33 decisionmakers, promoting independent scientific peer review,  
34 and coordinating with Delta agencies to promote science-based  
35 adaptive management. The Delta Science Program shall assist with  
36 development and periodic updates of the Delta Plan’s adaptive  
37 management program.  
38 (c) The Delta Science Program shall function as a replacement  
39 for, and successor to, the CALFED Science Program and the Delta

1 Independent Science Board shall replace the CALFED Independent  
2 Science Board.

3

4 PART 4. COMPREHENSIVE DELTA PLANNING

5

6 CHAPTER 1. THE DELTA PLAN

7

8 85300. (a) On or before January 1, 2012, the council shall  
9 develop, adopt, and commence implementation of the Delta Plan  
10 pursuant to this part that furthers the coequal goals. The Delta Plan  
11 shall include subgoals and strategies to assist in guiding state and  
12 local agency actions related to the Delta. In developing the Delta  
13 Plan, the council shall consider each of the strategies and actions  
14 set forth in the Strategic Plan and may include any of those  
15 strategies or actions in the Delta Plan. The Delta Plan may also  
16 identify specific actions that state or local agencies may take to  
17 implement the subgoals and strategies.

18 (b) In developing the Delta Plan, the council shall consult with  
19 federal, state, and local agencies with responsibilities in the Delta.  
20 All state agencies with responsibilities in the Delta shall cooperate  
21 with the council in developing the Delta Plan, upon request of the  
22 council.

23 (c) The council shall review the Delta Plan at least once every  
24 five years and may revise it as the council deems appropriate. The  
25 council may request any state agency with responsibilities in the  
26 Delta to make recommendations with respect to revision of the  
27 Delta Plan.

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

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

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

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

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

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

3 85301. (a) The commission shall develop, for consideration  
4 and incorporation into the Delta Plan by the council, a proposal to  
5 protect, enhance, and sustain the unique cultural, historical,  
6 recreational, agricultural, and economic values of the Delta as an  
7 evolving place, in a manner consistent with the coequal goals. For  
8 the purpose of carrying out this subdivision, the commission may  
9 include in the proposal the relevant strategies described in the  
10 Strategic Plan.

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

15 (2) The commission shall include in the proposal a regional  
16 economic plan to support increased investment in agriculture,  
17 recreation, tourism, and other resilient land uses in the Delta. The  
18 regional economic plan shall include detailed recommendations  
19 for the administration of the Delta Investment Fund created by  
20 Section 29778.5 of the Public Resources Code.

21 (c) For the purposes of assisting the commission in its  
22 preparation of the proposal, both of the following actions shall be  
23 undertaken:

24 (1) The Department of Parks and Recreation shall prepare a  
25 proposal, for submission to the commission, to expand within the  
26 Delta the network of state recreation areas, combining existing  
27 and newly designated areas. The proposal may incorporate  
28 appropriate aspects of any existing plans, including the Central  
29 Valley Vision Implementation Plan adopted by the Department of  
30 Parks and Recreation.

31 (2) The Department of Food and Agriculture shall prepare a  
32 proposal, for submission to the commission, to establish market  
33 incentives and infrastructure to protect and enhance the economic  
34 and public values of Delta agriculture.

35 (d) The commission shall submit the proposal developed  
36 pursuant to subdivision (a) to the council. The council shall  
37 consider the proposal and may include any portion of the proposal  
38 in the Delta Plan if the council, in its discretion, determines that  
39 the portion of the proposal is feasible and consistent with the  
40 objectives of the Delta Plan and the purposes of this division.

- 1 85302. (a) The implementation of the Delta Plan shall further  
2 the restoration of the Delta ecosystem and a reliable water supply.
- 3 (b) The geographic scope of the ecosystem restoration projects  
4 and programs identified in the Delta Plan shall be the Delta, except  
5 that the Delta Plan may include recommended ecosystem projects  
6 outside the Delta that will contribute to achievement of the coequal  
7 goals.
- 8 (c) The Delta Plan shall include measures that promote all of  
9 the following characteristics of a healthy Delta ecosystem:
- 10 (1) Viable populations of native resident and migratory species.  
11 (2) Functional corridors for migratory species.  
12 (3) Diverse and biologically appropriate habitats and ecosystem  
13 processes.  
14 (4) Reduced threats and stresses on the Delta ecosystem.  
15 (5) Conditions conducive to meeting or exceeding the goals in  
16 existing species recovery plans and state and federal goals with  
17 respect to doubling salmon populations.
- 18 (d) The Delta Plan shall include measures to promote a more  
19 reliable water supply that address all of the following:
- 20 (1) Meeting the needs for reasonable and beneficial uses of  
21 water.  
22 (2) Sustaining the economic vitality of the state.  
23 (3) Improving water quality to protect human health and the  
24 environment.
- 25 (e) The following subgoals and strategies for restoring a healthy  
26 ecosystem shall be included in the Delta Plan:
- 27 (1) Restore large areas of interconnected habitats within the  
28 Delta and its watershed by 2100.  
29 (2) Establish migratory corridors for fish, birds, and other  
30 animals along selected Delta river channels.  
31 (3) Promote self-sustaining, diverse populations of native and  
32 valued species by reducing the risk of take and harm from invasive  
33 species.  
34 (4) Restore Delta flows and channels to support a healthy estuary  
35 and other ecosystems.  
36 (5) Improve water quality to meet drinking water, agriculture,  
37 and ecosystem long-term goals.  
38 (6) Restore habitat necessary to avoid a net loss of migratory  
39 bird habitat and, where feasible, increase migratory bird habitat  
40 to promote viable populations of migratory birds.

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

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

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

8 85303. The Delta Plan shall promote statewide water  
9 conservation, water use efficiency, and sustainable use of water.

10 85304. The Delta Plan shall promote options for new and  
11 improved infrastructure relating to the water conveyance in the  
12 Delta, storage systems, and for the operation of both to achieve  
13 the coequal goals.

14 85305. (a) The Delta Plan shall attempt to reduce risks to  
15 people, property, and state interests in the Delta by promoting  
16 effective emergency preparedness, appropriate land uses, and  
17 strategic levee investments.

18 (b) The council may incorporate into the Delta Plan the  
19 emergency preparedness and response strategies for the Delta  
20 developed by the California Emergency Management Agency  
21 pursuant to Section 12994.5.

22 85306. The council, in consultation with the Central Valley  
23 Flood Protection Board, shall recommend in the Delta Plan  
24 priorities for state investments in levee operation, maintenance,  
25 and improvements in the Delta, including both levees that are a  
26 part of the State Plan of Flood Control and nonproject levees.

27 85307. (a) The Delta Plan may identify actions to be taken  
28 outside of the Delta, if those actions are determined to significantly  
29 reduce flood risks in the Delta.

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

31 (c) The council, in consultation with the Department of  
32 Transportation, may address in the Delta Plan the effects of climate  
33 change and sea level rise on the three state highways that cross the  
34 Delta.

35 (d) The council, in consultation with the State Energy Resources  
36 Conservation and Development Commission and the Public  
37 Utilities Commission, may incorporate into the Delta Plan  
38 additional actions to address the needs of Delta energy  
39 development, energy storage, and energy distribution.



1 85308. The Delta Plan shall meet all of the following  
2 requirements:

3 (a) Be based on the best available scientific information and the  
4 independent science advice provided by the Delta Independent  
5 Science Board.

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

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

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

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

15 (f) Include a science-based, transparent, and formal adaptive  
16 management strategy for ongoing ecosystem restoration and water  
17 management decisions.

18 85309. The department, in consultation with the United States  
19 Army Corps of Engineers and the Central Valley Flood Protection  
20 Board, shall prepare a proposal to coordinate flood and water  
21 supply operations of the State Water Project and the federal Central  
22 Valley Project, and submit the proposal to the council for  
23 consideration for incorporation into the Delta Plan. In drafting the  
24 proposal, the department shall consider all related actions set forth  
25 in the Strategic Plan.

26

27 CHAPTER 2. BAY DELTA CONSERVATION PLAN

28

29 85320. (a) The Bay Delta Conservation Plan (BDCP) shall be  
30 considered for inclusion in the Delta Plan in accordance with this  
31 chapter.

32 (b) The BDCP shall not be incorporated into the Delta Plan and  
33 the public benefits associated with the BDCP shall not be eligible  
34 for state funding, unless the BDCP does all of the following:

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

37 (2) Complies with Division 13 (commencing with Section  
38 21000) of the Public Resources Code, including a comprehensive  
39 review and analysis of all of the following:

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

9 (B) A reasonable range of Delta conveyance alternatives,  
10 including through-Delta, dual conveyance, and isolated conveyance  
11 alternatives and including further capacity and design options of  
12 a lined canal, an unlined canal, and pipelines.

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

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

18 (E) The potential effects on Sacramento River and San Joaquin  
19 River flood management.

20 (F) The resilience and recovery of Delta conveyance alternatives  
21 in the event of catastrophic loss caused by earthquake or flood or  
22 other natural disaster.

23 (G) The potential effects of each Delta conveyance alternative  
24 on Delta water quality.

25 (c) The department shall consult with the council and the Delta  
26 Independent Science Board during the development of the BDCP.  
27 The council shall be a responsible agency in the development of  
28 the environmental impact report. The Delta Independent Science  
29 Board shall review the draft environmental impact report and  
30 submit its comments to the council and the Department of Fish  
31 and Game.

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

37 (e) If the Department of Fish and Game approves the BDCP as  
38 a natural community conservation plan pursuant to Chapter 10  
39 (commencing with Section 2800) of Division 3 of the Fish and  
40 Game Code and determines that the BDCP meets the requirements

1 of this section, and the BDCP has been approved as a habitat  
2 conservation plan pursuant to the federal Endangered Species Act  
3 (16 U.S.C. Section 1531 et seq.), the council shall incorporate the  
4 BDCP into the Delta Plan. The Department of Fish and Game's  
5 determination that the BDCP has met the requirements of this  
6 section may be appealed to the council.

7 (f) The department, in coordination with the Department of Fish  
8 and Game, or any successor agencies charged with BDCP  
9 implementation, shall report to the council on the implementation  
10 of the BDCP at least once a year, including the status of monitoring  
11 programs and adaptive management.

12 (g) The council may make recommendations to BDCP  
13 implementing agencies regarding the implementation of the BDCP.  
14 BDCP implementing agencies shall consult with the council on  
15 these recommendations. These recommendations shall not change  
16 the terms and conditions of the permits issued by state and federal  
17 regulatory agencies.

18 85321. The BDCP shall include a transparent, real-time  
19 operational decisionmaking process in which fishery agencies  
20 ensure that applicable biological performance measures are  
21 achieved in a timely manner with respect to water system  
22 operations.

23 85322. This chapter does not amend, or create any additional  
24 legal obligation or cause of action under, Chapter 10 (commencing  
25 with Section 2800) of Division 3 of the Fish and Game Code or  
26 Division 13 (commencing with Section 21000) of the Public  
27 Resources Code.

28

29

### CHAPTER 3. OTHER PLANS FOR THE DELTA

30

31 85350. The council may incorporate other completed plans  
32 related to the Delta into the Delta Plan to the extent that the other  
33 plans promote the coequal goals.

34 SEC. 40. (a) Pursuant to Section 75026 of the Public Resources  
35 Code, the sum of twenty-eight million dollars (\$28,000,000) is  
36 hereby appropriated to the Department of Water Resources for  
37 expenditure by that department pursuant to paragraph (12) of  
38 subdivision (a) of Section 75027 of the Public Resources Code for  
39 the Two-Gates Fish Protection Demonstration Program managed  
40 by the United States Bureau of Reclamation. The Department of

1 Water Resources shall expend such funds only consistent with the  
2 requirements of Sections 75026 and 75027 of the Public Resources  
3 Code.

4 (b) It is the intent of the Legislature to finance the activities of  
5 the Delta Stewardship Council and the Sacramento-San Joaquin  
6 Delta Conservancy from funds made available pursuant to the  
7 Disaster Preparedness and Flood Prevention Bond Act of 2006  
8 (Chapter 1.699 (commencing with Section 5096.800) of Division  
9 5 of the Public Resources Code) and the Safe Drinking Water,  
10 Water Quality and Supply, Flood Control, River and Coastal  
11 Protection Bond Act of 2006 (Division 43 (commencing with  
12 Section 75001) of the Public Resources Code).

13 SEC. 41. If the Commission on State Mandates determines  
14 that this act contains costs mandated by the state, reimbursement  
15 to local agencies and school districts for those costs shall be made  
16 pursuant to Part 7 (commencing with Section 17500) of Division  
17 4 of Title 2 of the Government Code.

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

O