



● **Board of Directors**
Communications and Legislation Committee

April 14, 2009 Board Meeting

9-3

Subject

Report on Delta-related legislative bills: SB 12 (Simitian, D-Palo Alto) – Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009; SB 229 (Pavley, D-Santa Monica) – California Water Commission: Bay-Delta; SB 457 (Wolk, D-Davis) – Sacramento-San Joaquin Delta; SB 458 (Wolk, D-Davis) – Conservancies: Sacramento-San Joaquin Delta Conservancy; SB 808 (Wolk, D-Davis) – San Francisco Bay/Sacramento-San Joaquin Delta Estuary: strategic work plan; and AB 39 (Huffman, D-San Rafael) – Sacramento-San Joaquin Delta: Final Delta Vision Strategic Plan

Description

This letter provides a brief overview of six Delta-related legislative measures that have been introduced in the State Legislature this session. A brief description of each bill and summary of how each relates to previously adopted Board policy on the Delta Action Plan, water supply reliability, conveyance and governance is outlined below.

Overview

In June 2007, the Board approved a Delta Action Plan that provides a framework for actions to recover the ecosystem and modify the Delta's water conveyance system ([Attachment 1](#)). In September 2007, the Board adopted criteria for Delta conveyance needs that provide a benchmark to assess proposed federal and state legislative policies ([Attachment 2](#)). In August 2008, the Board approved a set of Delta governance recommendations in response to the creation, authorities and functions of the proposed Delta Ecosystem and Water Council as suggested by the Governor's Blue Ribbon Task Force ([Attachment 3](#)).

In October 2008 the Delta Vision Blue Ribbon Task Force released its Strategic Plan, with numerous recommendations for ecosystem, water system and governance reforms. The Schwarzenegger Administration's Delta Vision Cabinet Committee reviewed the Strategic Plan and, in December 2008, refined the recommendations in its own Implementation Report. A key difference between the two documents related specifically to governance. The Task Force's Strategic Plan included a Delta Ecosystem and Watershed Council to create and enforce a new Delta Plan. The Cabinet Committee's Implementation Report recommended deferring a governance recommendation to the Legislature for a year. The Administration, however, may release a governance recommendation sooner than the timetable envisioned in the Implementation Report, given the legislative interest in the subject.

Bill Summaries and Staff Assessment Regarding Proposed Delta Bills

Members of the State Senate and Assembly have introduced legislation to implement one or more aspects of the Delta Vision recommendations. The bills are briefly described below, along with a staff assessment for each:

- [SB 12 \(Simitian, D-Palo Alto\)](#) – SB 12 ([Attachment 4](#)) would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009, which establishes a Delta Ecosystem and Water Council, California Delta Conservancy, Delta Science and Engineering Board, and revises the membership of the existing Delta Protection Commission. The newly created entities would advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply for California and would direct the preparation and adoption of the California Delta Ecosystem and Water Plan by December 1, 2010.

The proposed new Council would have much more sweeping authority than recommended in Metropolitan's August 2008 Delta Governance Principles – including developing yet another plan for the Delta; “exclusive” authority to veto “projects” the Council determines are inconsistent with the plan; creating policies and procedures for “day-to-day” operations of and flow requirements for the state and federal water export projects; broad fee authority with little connection to benefits received; and assumption of responsibility for implementation of the Bay-Delta Conservation Plan (BDCP) and other habitat conservation plans.

- SB 229 (Pavley, D-Santa Monica) – SB 229 (**Attachment 5**) would substantially revise the membership and functions of the existing California Water Commission to oversee the implementation of the proposed Bay-Delta Interim Governance Act of 2009, including implementation of the BDCP; conduct annual reviews of construction and operation of the State Water Resources Development System; and assess BDCP development and implementation fees. The BDCP would be adopted by the Natural Resources Agency, rather than by the applicants. The imposed fees would be paid by all BDCP beneficiaries, as well as those entities that divert water from a Delta water body.

Directing the existing Water Commission to implement and directing the Natural Resources Agency to adopt the BDCP is contrary to the applicant-driven process outlined in the Board's June 1997 Delta Action Plan and September 2007 Long-Term Delta Plan. It is also uncertain what benefits would result from the fees imposed on those that divert water around or from the Delta.

- SB 457 (Wolk, D-Davis) – SB 457 (**Attachment 6**) is similar to SB 12 in several respects, but it would create a Delta Stewardship Council in the Natural Resources Agency with the same type of sweeping authorities. In addition, the bill would direct the Delta Protection Commission to develop a Delta Stewardship Plan by January 1, 2011. The bill also would create the Sacramento-San Joaquin Delta Conservancy, Delta Science and Engineering Board and Delta Stewardship Fund.

As with SB 12, this bill is not consistent with Metropolitan's August 2008 Delta Governance Principles. Furthermore, the Delta Protection Commission, tasked with developing the stewardship plan for the Delta, is composed of local representatives without representation from the State Water Project service area.

- SB 458 (Wolk, D-Davis) – SB 458 (**Attachment 7**) would establish the Sacramento-San Joaquin Delta Conservancy to undertake a broad array of activities related to the Delta, including that it “shall” implement the BDCP; adopt a “strategic plan” for implementing its goals, which are not specifically defined; protecting Delta agriculture, recreation and tourism; and monitoring projects within the Delta watershed. The San Joaquin-Delta Conservancy Fund would be created in the State Treasury, whereby funds would be available upon appropriation by the Legislature. In addition, the conservancy may create or participate in a joint powers authority or a supporting nonprofit organization to further the goals of the conservancy, including long-term land management and stewardship, interagency relations, and revenue generation.

The proposed Delta Conservancy could facilitate restoration activities in the Delta and facilitate the BDCP and other habitat conservation plans. However, as currently drafted, it is unclear whether the conservancy would help or hinder restoration or habitat conservation plans and may be inconsistent with the June 1997 Delta Action Plan and September 2007 Long-Term Delta Plan. The bill should clarify that the Conservancy shall implement BDCP projects *if requested by project proponents*. Also, its broad range of duties should be better focused to ensure that it can efficiently carry out its “goals,” which should be more precisely defined.

- SB 808 (Wolk, D-Davis) – SB 808 (**Attachment 8**) would require the State Water Resources Control Board (SWRCB) to implement its Resolution No. 20008-0056 (enacted on July 16, 2008) to advance its “Strategic Workplan for Actions to Protect Beneficial Uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary” by first reviewing the reasonableness of Delta diversion methods by the State Water Project and the federal Central Valley Project.

This bill would force the SWRCB to focus on the already regulated state and federal water projects, diverting staff and other critical resources that could be directed to actions that are not adequately controlled such as unregulated diversions in the Delta and upstream impacts of pollutant discharges, predation by non-native species and other environmental stressors in the Delta.

This bill could result in continued degradation of the Delta caused by other unregulated or underregulated stressors and lead to additional restrictions on water project customers that provide increasingly smaller, if any, benefits to the Delta ecosystem, fish and wildlife.

- AB 39 (Huffman, D-San Rafael) – AB 39 (**Attachment 9**), a placeholder, declares the intent of the Legislature to enact legislation to implement the recommendations of the Delta Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task Force and the Delta Vision Committee.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

By Minute Item 47232, dated September 11, 2007, the Board adopted criteria for support of conveyance options in implementation of a long-term Delta improvement plan.

By Minute Item 47605, dated August 19, 2008, the Board approved Delta Governance Principles as outlined in the board letter.

Fiscal Impact

None

 Linda Waade Deputy General Manager, External Affairs	4/3/2009 Date
 Jeffrey Lightlinger General Manager	4/3/2009 Date

Attachment 1 – Board Letter 8-6 dated June 12, 2007 - Adopt Proposed Framework for Metropolitan’s Delta Action Plan

Attachment 2 – Revised Board Letter 8-4 dated September 11, 2007 - Adopt Criteria for Conveyance Options in Implementation of Long Term Delta Plan

Attachment 3 – Board Letter 8-11 dated August 19, 2008 - Approve Delta Governance Principles

Attachment 4 – Senate Bill 12

Attachment 5 – Senate Bill 229

Attachment 6 – Senate Bill 457

Attachment 7 – Senate Bill 458

Attachment 8 – Senate Bill 808

Attachment 9 – Assembly Bill 39



- **Board of Directors**
Water Planning and Stewardship Committee

June 12, 2007 Board Meeting

8-6

Subject

Adopt proposed framework for Metropolitan's Delta Action Plan

Description

Overview. At the Metropolitan Board of Directors Retreat on April 13–14, 2007, the Board held a policy discussion focused on the following key Bay-Delta issues:

- What are Metropolitan's key interests in the Delta?
- What is the plan for meeting future regional needs?
- What are the components of a Delta fix?
- What are the timelines, drivers and strategies for moving forward?

The core of the Board discussion was a proposed framework for directing Metropolitan's staff actions on Delta-related issues. This framework is comprised of the following three components:

- **Short-Term Action Plan.** Actions over next 18 months to secure short-term permits for operating the State Water Project Banks pumping plant and avoiding incidental take of threatened or endangered species; implementing/funding a Delta Levee Emergency Preparedness and Response Plan; and selection and approval of key elements of the Bay-Delta Conservation Plan and long-term Delta Vision.
- **Mid-Term Action Plan.** Actions prior to a long-term Delta solution to secure long-term operating permits for the State Water Project under the Bay-Delta Conservation Plan; develop an implementation plan and environmental documentation for the preferred long-term Delta Vision; and implementation of early start "no regrets" ecosystem restoration projects.
- **Long-Term Action Plan.** Actions to fully implement, govern and finance the elements of a long-term Delta Vision. These elements include water quality/supply infrastructure, Delta habitat protection and restoration, flood control and levees, and others.

Components of a Delta Fix. The Governor has identified statewide water policy as a high priority by establishing the Delta Vision Process and the Bay-Delta Conservation Plan. Similarly, the legislative leadership in the California Senate indicates through Senate Bill 27 its intent to make a decision about the Delta using the recent Public Policy Institute of California report (PPIC report) as a framework for decision-making. The PPIC report identifies two categories of alternatives for securing long-term environmental and water supply solutions in the Delta: (1) Fluctuating Delta Alternatives with a fluctuating-salinity Delta and an isolated conveyance fresh-water facility; and (2) Reduced-Export Alternatives that accomplish desired flows and salinity for the aquatic environment through reduced exports. A full analysis of these alternatives is being completed through the Bay-Delta Conservation Plan and Delta Vision process.

Preliminary staff analysis of the alternatives indicate that the Fluctuating Delta Alternatives have promising environmental and water supply reliability performance but would require major capital investments in the Delta and would require the support of a statewide coalition of urban, agricultural, environmental, and business interests. The Reduced-Export Alternatives would require lower capital investments in the Delta but would cause a substantial water loss to the State Water Project and Central Valley Project contractors.

Timeline/Milestone. Staff is planning monthly updates to the Board on Delta-related processes and will seek Board action on key issues including:

- Bay-Delta Legislation – funding for emergency preparedness and response actions; funding and governance for new Delta facilities; and continued funding for Delta ecosystem restoration actions.
- Administrative Decision Processes – selection of a long-term Delta Vision Alternative, approval and implementation of the Bay-Delta Conservation Plan, and implementation of the Delta Levee Emergency Preparedness and Response Plan.
- Legal and Regulatory Decisions – potential action on the decisions involving the California and Federal Endangered Species Act (CESA) litigation; approval of biological opinions for the Central Valley Project/State Water Project Delta pumping plants operations, and long-term assurances.

Attachment 1 provides an executive summary of the proposed framework for a Delta Action Plan. A more detailed description of the key issues that are scheduled to come before the Board, and of Metropolitan's proposed Delta Action Plan are included in Attachment 2 entitled Report on Metropolitan's Delta Action Plan.

Policy

By Minute Item 46637, dated April 11, 2006, and Minute Item 45753, dated May 11, 2004, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff. This board letter follows those policy principles in guiding development of Metropolitan's Delta Action Plan.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). For future, and not yet known, proposed projects associated with the Delta Action Plan, the appropriate lead agencies will be responsible for complying with all applicable federal and state environmental laws and regulations..

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and support, in principle, the proposed Delta Action Plan.

Fiscal Impact: A full financial analysis of these options will be developed, and brought back to the Board, as the specific elements under each option become more defined.

Business Analysis: The Delta Action Plan calls for analyzing alternative strategies for reducing long-standing conflicts in the Delta and improving water reliability, water quality, levee stability, and the environment. A full business case analysis will be developed, and brought back to the Board, as the specific elements under each option become more defined.

Option #2

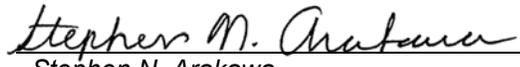
Do not support the proposed Delta Action Plan.

Fiscal Impact: Unknown

Business Analysis: This would increase the risks associated with providing a reliable water supply from the State Water Project.

Staff Recommendation

Option #1

	5/25/2007
Stephen N. Arakawa	Date
Manager, Water Resource Management	

	5/25/2007
Jeffrey Lightlinger	Date
General Manager	

Attachment 1 – Metropolitan Water District Delta Action Plan

Attachment 2 – Report on Metropolitan’s Delta Action Plan

BLA #5474

Metropolitan Water District Delta Action Plan

I. Overview

The Delta is the hub of California's water supply and is critically important to the entire State. The Delta is in a state of ecological crisis and is not sustainable unless action is taken. Building a sustainable Delta will require significant investment and will take decades. The Delta Action Plan must prioritize immediate short-term actions to stabilize the Delta while an ultimate solution is selected, and mid-term steps to maintain the Delta while the long-term solution is implemented. By 2020, California should have a long-term solution for the Delta in place that can be adjusted and adaptively managed to deal with the coming changes from climate change and California's continued population growth.

II. Short-Term Action Plan

The Governor's Delta Vision Process calls for a recommendation from the Delta Vision Blue Ribbon Task Force to be made by January 2008. SB 27 (Simitian, et al.) urges the Task Force to make its recommendation based on the findings of the Public Policy Institute of California Delta report (PPIC report) for legislation to be enacted in 2008. While 2008 will be the year for selecting a course of action on the Delta, actions must be taken over the next 18 months to stabilize the current situation. These actions include the following: securing state and federal Endangered Species Acts take authorization; emergency preparedness steps to prepare for possibility of catastrophic failure in the event of earthquake or flood; actions to enhance habitat for Delta smelt and other pelagic species; completion of the Bay-Delta Conservation Plan (BDCP); and actions to begin work on ecosystem restoration projects that will help species regardless of which ultimate solution is selected (e.g., marsh restoration, island rebuilding.)

III. Mid-Term Action Plan

Upon selection and enactment of an ultimate Delta solution, it will likely take ten years or more to complete environmental documentation and construct new facilities. During this period, it will be necessary to maintain the stabilization process of the Delta through the following actions: continue implementation of the BDCP projects; continue with selected habitat and fishery improvements to improve Delta native species; begin implementing flood control protections, including bypasses and levee improvements; finalize site selection and environmental documentation for new storage projects; implement new governance structures for managing the Delta; and undertake implementation of the long-term Delta solution.

IV. Long-Term Action Plan

The Long-Term Action Plan must take a global, comprehensive approach to the fundamental issues and conflicts in the Delta to result in a truly sustainable Delta. A piecemeal approach cannot satisfy the many stakeholders that have an interest in the Delta and will fail; there must be a holistic approach that deals with all issues simultaneously. In dealing with the basic issues of the Delta, solutions must address the physical changes required, as well as the financing and governance. There are three basic elements that must be addressed: Delta ecosystem restoration; water supply conveyance; and flood control protection and storage development.

A. Delta Ecosystem Restoration – A complete Delta restoration plan must address land use, growth, agriculture, water usage and conveyance, and the aquatic and land habitat of the Delta through the following elements:

- **Bay-Delta Conservation Plan** – the BDCP is a subset of Delta restoration primarily focused on the aquatic environment of the Delta and will address fishery issues;
- **Habitat Land Acquisition and Restoration** – a portion of the Delta will need to be restored to native marsh habitat for protection of aquatic and terrestrial species;

- **Sustainable Agriculture** – programs will be needed to maintain sustainable agriculture within the Delta in ways that limit oxidization of soils, rebuild Delta islands, limit carbon production, improve water quality and provide habitat opportunities;
- **Governance** – management of Delta restoration will require a governance structure such as a conservancy or special district that has financing and land use powers and can manage a program within multiple counties;
- **Financing** – costs of restoration must be shared by multiple parties with water exporters and other utilities helping finance the BDCP, the state paying for broad public benefits, developers within the Delta area paying for development rights, etc.

B. Water Supply Infrastructure – The current practice of using Delta channels and levees for water conveyance is not sustainable. Delta species require fluctuating salinity levels that will be harmful to drinking water quality. The levees are unstable and pose a constant threat of collapse. In addition, global warming threatens water supply with rising sea levels and increased flooding. Either new Delta conveyance infrastructure must be constructed or there will be significant reductions in Delta exports requiring new water facility development elsewhere to replace lost water supplies. Important elements of this needed infrastructure include:

- **Isolated Facility** – If water supply is to be maintained, that water must be separated from Delta water supplies through construction of an isolated facility either in or around the Delta. The three isolated facility alternatives in the PPIC report must be analyzed to determine which performs best for water supply reliability, is cost-effective, protects against earthquakes and floods, provides water quality, deals with rising sea levels and allows for Delta salinity fluctuation for native species protection.
- **Eco-Delta/Reduced Exports** – If an isolated facility is not constructed, the PPIC Report recommends that a fluctuating salinity Delta be achieved primarily through a reduction in water exports. This approach must be thoroughly analyzed to determine the economic consequences of loss in water supply, whether reduced exports will actually protect species, and identify additional water supply facilities that would be required.
- **Governance** – Management of the State Water Project should be given to a separate agency tasked with the single mission of managing and operating the Project. This would separate the utility function from the Department of Water Resources thereby removing conflicts within DWR in its role of operating a utility for certain contractors while providing statewide water planning. Appropriate forms of such an independent agency include a special district or a joint powers authority. This new entity would continue to be regulated by state and federal agencies and all applicable laws.
- **Financing** – State and federal water contractors should pay for the operation and management of the water supply projects, including construction of new water infrastructure such as an isolated facility. A state decision to reduce exports should be financed by the state including payment for lost agriculture lands and financing for replacement of water supplies.

C. Flood Control and Storage – The third component of a comprehensive approach would be construction of flood control and storage facilities. These actions would include levee hardening in critical areas, construction of bypasses to deal with increased runoff associated with climate change and construction of more storage, either surface water or groundwater storage.

- **Governance** – No new governance structure is recommended for this component. Existing agencies such as the Army Corps of Engineers, the Bureau of Reclamation, and DWR should manage the flood control projects. New storage facilities should be managed by the agencies that construct them.
- **Financing** – The state and federal governments should be responsible for the costs of flood control facilities. New storage facilities should be financed by the beneficiaries of those projects with state financing for the broad public benefits associated with those projects.

Report on Metropolitan's Delta Action Plan

I. Overview

At the Metropolitan Board of Directors Retreat on April 13–14, 2007, the Board held a policy discussion focused on the following key Bay-Delta issues:

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- What is the plan for meeting future regional needs?
- What are the components of a Delta fix?
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The Governor has identified statewide water policy as a high priority by establishing the Delta Vision Process and the Bay-Delta Conservation Plan. Similarly, the legislative leadership in the California Senate indicates through SB 27 its intent to make a decision about the Delta using the recent Public Policy Institute of California report (PPIC report) as a framework for decision-making. The PPIC report identifies two types of alternatives for securing a long-term environmental and water supply solutions in the Delta: (1) Fluctuating Delta Alternatives with an isolated conveyance fresh-water facility; and (2) Reduced-Exports Alternatives that accomplish desired flows and salinity for the aquatic environment through reduced exports. A full analysis of these alternatives is being completed through the Bay-Delta Conservation Plan and Delta Vision process.

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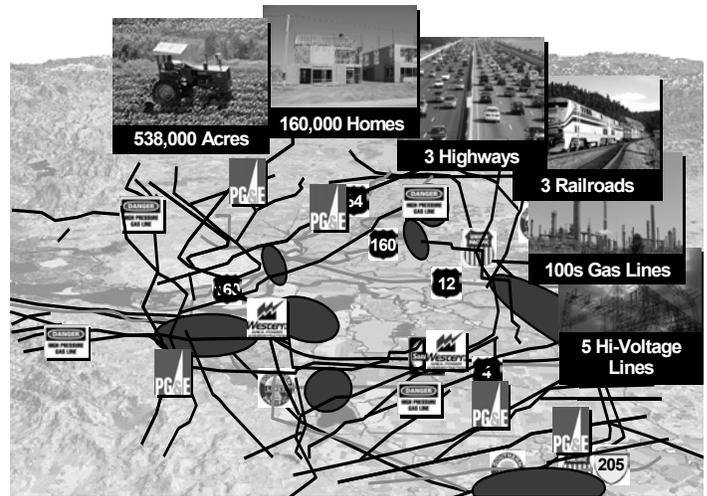
II. Metropolitan's Interests in the Delta

The Bay-Delta has been referred to as the hub of California's water system. It provides water supply to two-thirds of California's population (22 million residents), including urban population centers in the Bay Area, Central Coast, and Southern California. It also provides water supplies to agricultural lands that irrigate 45 percent of the fruits and vegetables produced in the United States. From an ecosystem standpoint it is the largest estuary on the west coast of North and South America. Its waters are home to over 500 species, including five fish species listed on the Endangered Species Act. In addition to its water-related importance, its

transportation and utility infrastructure is critical for maintaining reliable goods movement and energy throughout the Pacific power grid system.

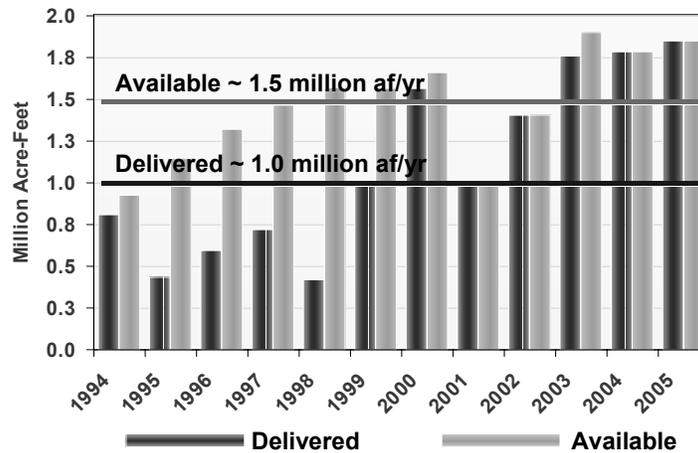
In 1960, Metropolitan signed a contract with the state of California to supply up to 2.011 million acre-feet of water per year to Southern California. Over the last decade, the State Water Project has made available approximately 15 million acre-feet to Metropolitan, with Metropolitan taking approximately 10 million acre-feet. Many of Metropolitan’s local infrastructure investments heavily rely on Delta water supplies including groundwater and surface storage programs (e.g. Chino Basin, Arvin Edison, Diamond Valley Lake), and local conveyance (Rialto Pipeline, Inland Feeder Pipeline). The total cost of this supply, including power, is currently approximately \$250 per acre-foot. Metropolitan’s repayment of revenue bonds for the State Water Project runs through 2035. Payments for SWP capital facilities are made on a “take-or-pay” basis (i.e., these charges must be paid regardless of the amount of water delivered). Past payments (through 2006) amount to nearly \$8 billion and Metropolitan will be required to pay another \$15 billion through 2035 under its State Water Contract.

Importance of the Bay-Delta



MWD’s State Water Project Supplies

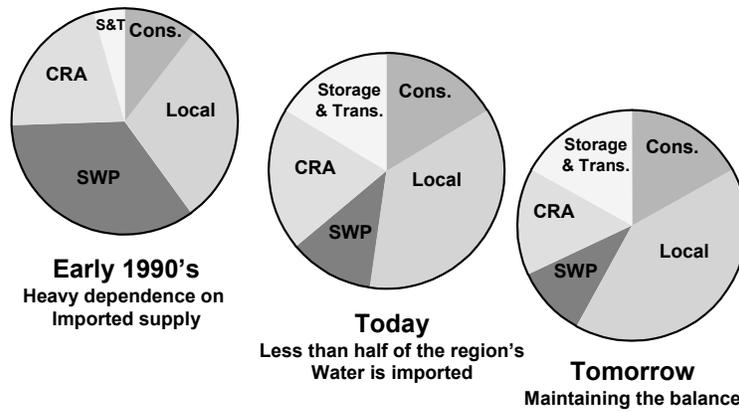
15 million acre-feet available since 1995



III. Meeting Future Regional Needs

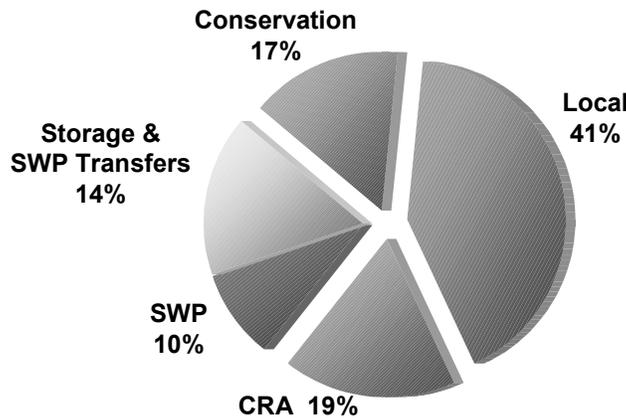
Metropolitan’s plan for meeting its service area supply needs has changed significantly over the last two decades. In the early 1990s, Metropolitan’s long-term plans called for a heavy dependence on imported supplies from the Colorado River and Bay-Delta during dry periods. Today, under the Integrated Resources Plan adopted by the Board in 1995, less than half of the region’s water is imported during those dry periods, with only about ten percent of dry-year water delivered directly from the Delta. Through recent investments in local groundwater and surface storage, Metropolitan and its member agencies have been better able to capture and store wet-year flows from the SWP, thereby reducing environment pressures on the Delta and its fisheries during dry periods.

Metropolitan Service Area Dry-Year Supplies Yesterday, Today, Tomorrow



Metropolitan’s Integrated Resources Plan commits to meeting future growth in Southern California’s water demands substantially through increased water use efficiency, local and regional supply development, and voluntary transfers of conserved water from willing sellers. Unlike the policy debates surrounding the Delta in the past that were focused on getting more water out of the Delta, the primary supply objective of Metropolitan is to protect the existing reliability of SWP supplies to meet base water demands and replenish storage.

2025 Dry-Year Resources Targets



IV. Components of a Fix

In February 2007, the Public Policy Institute of California published a report entitled “Envisioning Futures for the Sacramento-San Joaquin Delta”. The report analyzes nine alternatives that are summarized into three categories—maintaining the Delta as a fresh water body, restoring natural fluctuating tidal and salinity patterns in the Delta, and reducing water supplies from the Delta to improve fish hydrology. Out of the nine alternatives, four were eliminated due to poor environmental performance and high water costs. The remaining five alternatives can be achieved through one of two methodologies: (1) Fluctuating Delta Alternatives, and (2) Reduced-Export Alternatives.

A. Fluctuating Delta Alternatives. These alternatives include construction of an isolated open water channel to convey fresh water to the export facilities in the South Delta; investments in aquatic and riparian habitat in the Suisun Marsh, Cache Slough, and Yolo Bypass areas; and restoring natural tidal and salinity patterns in the Delta. The advantages of these alternatives include:

- Promising environmental performance
- Maintenance of existing water export reliability
- Significant improvements in source water quality
- Reducing water supply risks due to earthquake or flood over topping of levees
- Continued water transfer and local surface and groundwater storage programs

The disadvantages of these alternatives include:

- Major capital investments in the Delta. Early estimates of an isolated, open water conveyance channel could cost up to \$4 billion. Metropolitan would be required to pay its share of these costs and additional costs for environmental enhancements.
- Challenging political differences

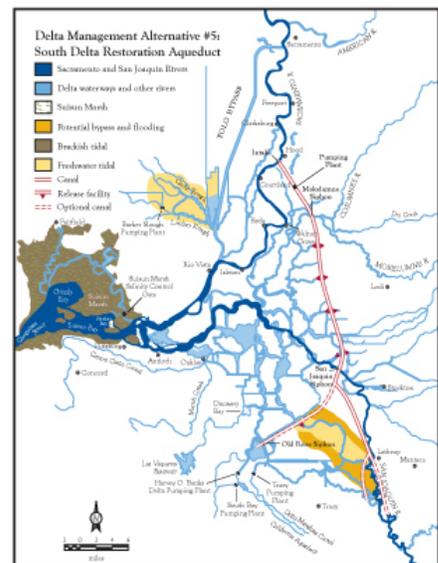
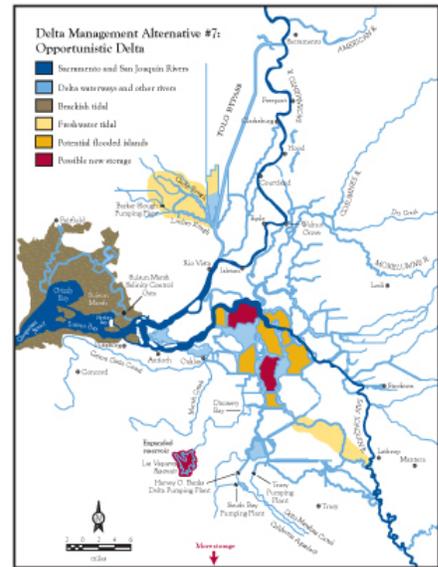
B. Reduced-Export Alternatives. These alternatives maintain reliance on through-Delta fresh water conveyance, improve fish hydrology through export reduction, and attempts to restore natural tidal salinity fluctuations in the western Delta. The advantages of these alternatives include:

- Relatively low capital investment in the Delta
- Fluctuating salinity in the western Delta

The disadvantages of these alternatives include:

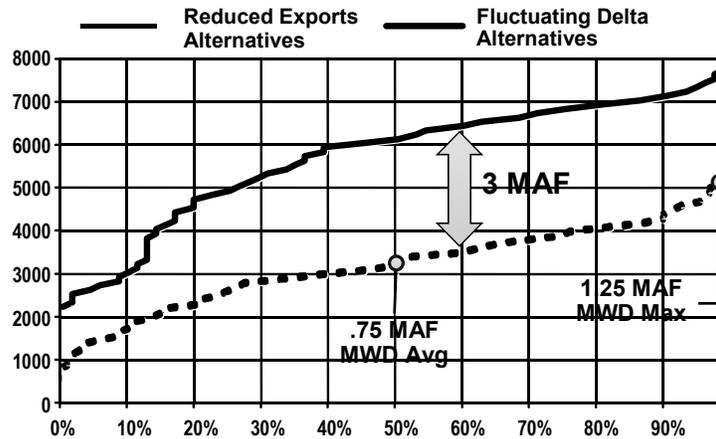
- Environmental effectiveness unclear, according to the PPIC report
- Substantial water loss to SWP and CVP contractors (Metropolitan’s loss is estimated to be as much as 750,000 acre-feet per year on average)
- Substantial increase in local resource investments to meet future growth and replace lost supply
- Stranded infrastructure investments (Metropolitan, member agencies, others)

C. Water Loss Analysis of Reduced-Export Alternatives. The water loss estimate of the Reduced-Export Alternative is based on a computer modeled, operations simulation analysis of a proposal by Dr. Peter Moyle (Biology Professor, UC Davis) and Dr. Tina Swanson (senior scientist, The Bay Institute) entitled “Recommendations for Actions to Protect Delta Smelt” dated March 13, 2007. The analysis shows how long-term SWP-CVP export reliability would be reduced if the proposal were implemented. In summary, the computer modeling shows that export reductions would vary by water year type (3.1 million acre-feet in above normal to below normal years, and 1.2 million acre-feet in critical years). However, percent export reduction would be similar regardless of water year type (48 percent in above and below normal water years, and 39 percent in wet years).



On average, Metropolitan would receive 750,000 acre-feet less (a 50 percent reduction) than the 1.5 million acre-feet it currently receives from the SWP on average. Metropolitan’s maximum supply during wet years would be reduced from approximately 1.9 million acre-feet to 1.25 million acre-feet. The reduction in wet year supplies would affect Metropolitan and its member agencies ability to refill local groundwater and surface storage accounts. Continued detailed analysis of the types of solutions that would be used in the reduced export approach will be conducted to determine the variability in potential losses under different scenarios.

Combined SWP-CVP Export Reliability

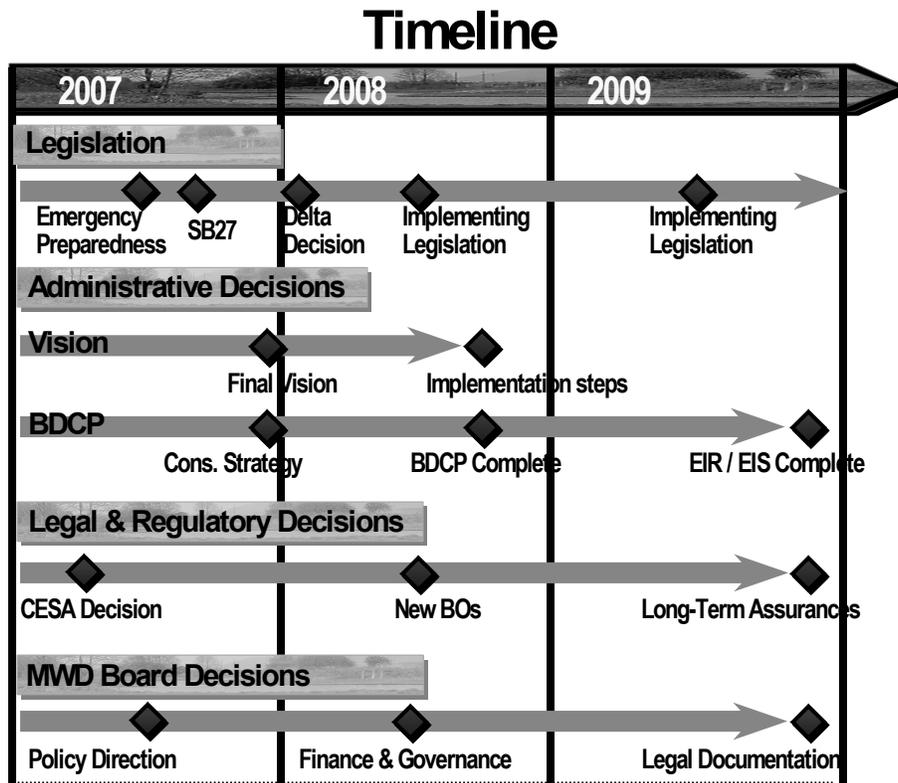


Staff is conducting a more detailed inventory of potential local resources projects and water use efficiency measures that could be implemented to mitigate delta supply losses. It is anticipated that this analysis will provide more specific information on the types of projects, implementation schedules, and costs. This replacement water analysis on feasibility and costs will be developed and brought to the Board.

V. Timeline

Over the next three years, a number of key decisions will be made on the future of the Bay-Delta. These decisions include:

- Bay-Delta Legislation – funding for emergency preparedness and response actions; funding and governance for new Delta facilities; and continued funding for Delta ecosystem restoration actions.
- Administrative Decision Processes – selection of a long-term Delta Vision Alternative, approval and implementation of the Bay-Delta Conservation Plan, and approval and implementation of the Delta Levee Emergency Preparedness and Response Plan.
- Legal and Regulatory Decisions – potential action on the decisions involving the California and Federal Endangered Species Act litigation; approval of biological opinions for the Central Valley Project/State Water Project Delta pumping plants operations, and long-term assurances.



VI. Short-Term Action Plan

A short-term action plan is intended to implement immediate actions while the Delta Vision Process develops a long-term solution. The focus of the short-term action plan over the next 18 months is to: (1) reduce risks in the Delta due to potential levee collapse from an earthquake or flood, or to pump shutdown due to permit challenge or fishery species management issue; (2) move forward with short-term actions to reduce incidental take, secure ESA permits, and address the immediate pelagic organism decline crisis; and (3) selection and approval of key elements of the long-term Bay-Delta Conservation Plan and Delta Vision.

A. Actions To Secure Endangered Species Act Permits

A1. Acquire authorization for Incidental Take for the SWP under the Federal and California Endangered Species Act. Authorization for incidental take under the state and federal Endangered Species Acts are in litigation in both state and federal courts. In a recent decision, the Alameda Superior Court in *Watershed Enforcers v. California Department of Water Resources (DWR)* found that DWR does not have authorization for incidental take under the CESA and ordered all pumping to cease within 60 days unless DWR acquires incidental take authorization. The order is currently under appeal by DWR.

DWR’s operation of the SWP also is subject to the Federal Endangered Species Act (FESA) take prohibition, and receives incidental take authorization through Section 7 consultations and biological opinions. The biological opinions have been found to be inadequate in a ruling in United States District Court. In addition, due to new listings and changed conditions, particularly with regards to Delta smelt, both biological opinions are the subject of new consultations and will be revised regardless of the legal challenges.

B. Actions To Reduce Incidental Take of Delta Smelt. DWR has been discussing implementation of the Environmental Water Account (EWA) for 2008 to assure that EWA is fully functional to assist in avoiding take of Delta Smelt. EWA implementation will include:

- B1. Environmental Water Account (EWA) Assets.** EWA procedures call for purchasing between 210,000 and 250,000 acre-feet of water per year in the water markets. To assure that EWA has assets consistent with the 2004 Biological Opinions, the State Water Project could purchase water for EWA to meet its purchase target if EWA is unable to procure the water in the market and needs the water for Delta Smelt protection.
- B2. Increased Monitoring and Real-Time Operations.** DWR will revise real-time monitoring in the Delta, particularly with the installation of additional turbidity monitors. Based on recent analysis by Metropolitan staff, this could result in significant improvements in the effectiveness of EWA operations, allowing operators to react earlier and more efficiently to conditions that threaten Delta smelt and avoiding water losses when pumping reductions would not likely have biological benefits.
- B3. EWA Ability to Pay Back Water with Surplus Pumping.** EWA rules specify that the EWA cannot pay down water debt to the SWP in San Luis Reservoir by pumping surplus Delta water at Banks until all SWP contractors' demands are satisfied, including demand for Article 21 water. This rule has constrained EWA ability to repay debt. The biological opinion covering the EWA provides that water available above specified amounts of Article 21 deliveries may be shared with EWA to allow repayment of debt. DWR can apply this rule consistent with the biological opinion. This would protect EWA assets while reducing SWP Article 21 supplies.

C. Actions to Reduce Risks Due to Levee Collapse from an Earthquake or Flood

- C1. Secure State Approval and Funding for a Delta Levees Emergency Preparedness and Response Plan.** In February 2006, the Board directed staff to work with the State Water Contractors and DWR to develop a Delta emergency preparedness and response plan to reduce water supply impacts with the most cost-effective means of prevention and response. In April 2007, the Board directed staff to work toward implementation of a "Post-Event Strategy" in which materials would be pre-positioned to allow for a quick response to an earthquake or other disaster, bringing the SWP back on-line within six months.

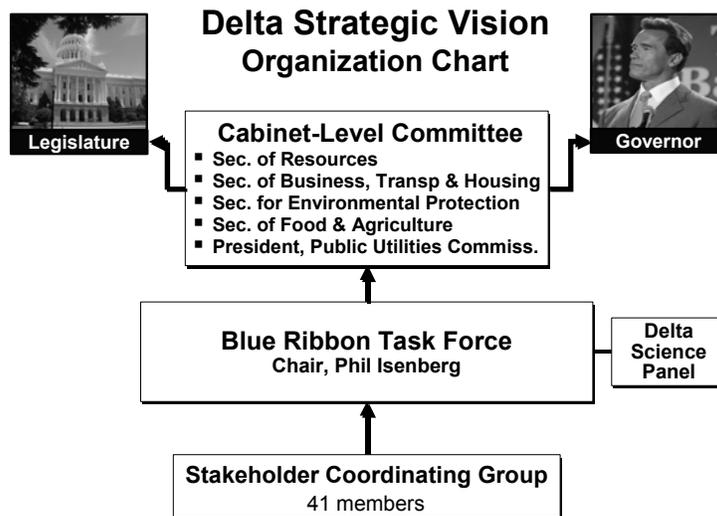
DWR is working with Metropolitan and the State Water Contractors to integrate these water supply protections into an interim report to the Emergency Operations Plan for the Delta with a goal of securing initial funding this year. This will more fully define the pre-positioning of stockpiles, improved emergency contracting capabilities and response mechanisms for a severe levee failure emergency.

State Propositions 1E and 84 both contain funds that could be used for this emergency response plan. Some costs may not be covered by Propositions 1E and 84 funds and may be attributed to the State Water Project. In that event, Metropolitan would be responsible for its share of those costs.

- D. Actions to Select and Finance Early Start "No Regrets" Ecosystem Restoration Projects.** The following is a potential list of ecosystem restoration projects that are being analyzed as part of an early implementation of the Bay-Delta Conservation Plan. It is anticipated that these projects could be funded through existing bond funds (Propositions 1E and 84) and possibly with additional funds provided by SWP contractors and others. Many of the proposed measures would assist fisheries in the Delta by creating new or improved habitat. The goal is through cooperation with environmental groups and other water agencies to accelerate their projects.

- D1. Restore Tidal Marsh at Meins Landing in the Suisun Marsh.** The Suisun Marsh has largely been managed as non-tidal seasonal wetlands for waterfowl and other birds. Restoration of brackish tidal marsh would improve habitat for native fish in an area where they are less vulnerable to the Delta pumps. In 2006, the Department of Water Resources purchased 600 acres of land at Meins Landing. The cost of restoring this land to tidal marsh is estimated at \$1 million to 10 million depending upon restoration land sculpting.

- D2. Expedite Implementation of the Dutch Slough Tidal Marsh Restoration Project.** The 1,200-acre Dutch Slough site is owned by DWR and has approved restoration plans and a draft EIR that makes it ready for implementation. The estimated restoration cost to restore the land to tidal marsh is \$10 million to \$30 million depending upon final restoration plans.
- D3. Acquire and Begin Restoration of Decker Island.** Decker Island, adjacent to the Sacramento River, is currently for sale. In the 1920s, the island was a wetland that was covered by over 20 feet of dredged spoils from the dredging of the Sacramento River. Removal of the over burden materials could result in approximately 400 acres of restored tidal marsh along the main migration corridor and habitat area for native species. Experts believe Decker Island could be significant regional food source in a prime location. As an added benefit, this project could contribute significant material to address Delta stability issues and create new habitat. The estimated cost is \$8 million for land acquisition and up to \$50 million for removal of dredged fill material.
- D4. Acquire and Begin Restoration of Tidal Wetlands in the Cache Slough Region.** There are over 3,000 acres of farmland that lie within the inter-tidal elevation in the Cache Slough Region. These lands could be converted to tidal wetlands that would significantly contribute to the food web. The estimated cost is \$1 million to \$10 million depending upon land acquisition costs.
- D5. Modify Fremont Weir to Allow Pulse Flows into Yolo Bypass for Improved Fish Passage.** This project would construct a fish passage and flow control facility at the Fremont Weir capable of passing short flow pulses for periodic inundation of the Yolo Bypass. Periodic inundation provides excellent rearing habitat for juvenile salmon and splittail and critical spawning habitat for the splittail. Modification of the Fremont Weir could also allow improved fish migration through the bypass, permitting juvenile salmon to bypass the Delta Cross Channel and other hazards associated with migrating through the Delta.
- D6. Expedite Implementation of the McCormick-Williamson Tract Tidal Marsh Restoration Project.** The Nature Conservancy (TNC) owns the 1,500-acre site and has developed restoration plans and a draft Environmental Impact Report that make it ready for implementation. TNC purchased McCormack-Williamson Tract and Staten Island with funding from the CALFED Bay-Delta Program totaling roughly \$34 million. McCormack-Williamson, in particular, has ideal topography for a mosaic of habitats. The estimated cost is \$1 million to \$10 million depending upon restoration plans.
- E. Select a Preferred Water Supply/Quality Alternative Under the Long-Term Delta Vision Process.** In September 2006, Governor Schwarzenegger established by Executive Order the Delta Vision Process. The purpose of this effort is to develop recommendations for a sustainable Sacramento-San Joaquin Bay-Delta.
- In February 2007, the Governor appointed a seven-member Blue Ribbon Task Force to recommend a long-term vision for the Delta to a five-member cabinet-level committee, which will ultimately make a recommendation to the Governor. The Governor also appointed 41 stakeholders, including General Manager Jeff Kightlinger, to the Stakeholder Coordination Group, which will provide advice to the Blue Ribbon Task Force.
- The schedule for recommendations to the Governor by this Blue Ribbon Task Force and Stakeholder Panel are:
- Jan 2008 – Findings and recommendations report on a preferred long-term Delta Vision
 - Oct 2008 – Release of a Strategic Implementation Plan for funding and implementation of a preferred long-term Delta Vision



The Delta Vision Process will review a number of elements in developing their findings and recommendations. These elements will include: ecosystem restoration, water supply reliability, water quality enhancement, flood control and levee stability, water storage, governance, financing, and others.

F. Select a Governance Strategy to Implement and Operate New Delta Facilities and Ecosystem

Restoration Elements in the Delta Vision and Bay-Delta Conservation Plan. Selection of a long-term Delta Vision will likely include a recommended strategy to govern possible new water supply conveyance infrastructure and implementation of ecosystem restoration projects. Staff is currently analyzing multiple models and options for improved governance. One promising alternative being discussed is the creation of two new entities:

- Bay-Delta Conservancy – this entity would implement and operate ecosystem restoration projects in the Bay-Delta region. It would set ecosystem restoration goals, and coordinate with operating entities. It would also have the ability to accept private and public funding.
- Joint SWP & Delta Conveyance Infrastructure Entity – this entity would combine the operations and management of the State Water Project and new Delta conveyance infrastructure.

The objective of these two new entities is to provide public confidence in operations, management, and governance to the public, to assist in ensuring environmental restoration, water quality and supply reliability goals are met, and to combine management functions of new and existing water supply infrastructure. Existing models for this type of governance structure currently exist in the western United States.

G. Select a Financing Strategy to Implement and Operate New Delta Facilities and Ecosystem Restoration

Elements in The Delta Vision and Bay-Delta Conservation Plan. Selection of a long-term Delta Vision will likely include a recommended strategy for funding the infrastructure elements and ecosystem restoration program elements.

In April 2006, the Metropolitan Board approved a set of policy principles regarding long-term actions for the Sacramento-San Joaquin River Delta. This included the following policies related to financing:

- Long-Term Solutions Must be Cost-Effective and Fairly Apportion Costs to All Beneficiaries: Long-term Delta solutions must seek to minimize the combined costs of in-Delta and outside-the-Delta actions, including actions identified in regional integrated resource management plans. Cost-sharing agreements must reflect an equitable allocation of costs among the multiple beneficiaries of the Bay-Delta. All entities that contribute to adverse environmental impacts or benefit from Delta improvements should pay

their fair share of costs. Long-term investments in the Delta must be consistent with a sound long-term vision for the Delta's physical structure to avoid the possibility of significant stranded costs.

- **Implement Least-Cost Strategies:** Because of solutions to this policy challenge will be expensive to taxpayers, utility ratepayers and consumers, it is imperative the long-term Delta policy leads to the implementation of reliable, sustainable least-cost strategies. These strategies should be consistent with regional integrated water management plans, including water use efficiency actions. While any solution will be expensive, the least-cost options should be strongly considered because of the competing needs for other infrastructure.
- **All Beneficiaries Must Pay Their Fair Share:** All entities that benefit from Delta improvements or contribute to adverse environmental impacts should pay their fair share of costs. Cost-sharing agreements must reflect an equitable allocation of costs among the multiple beneficiaries.
- **Secure State & Federal Funding Contributions for Broad Public Benefits:** The broad public benefits of actions to sustain the Delta should be funded with continued contributions from the State General Fund, general obligation bonds, and federal appropriations for the implementation of Delta-related policies.
- **Encourage Continued Regional Investments:** State policy should encourage continued statewide implementation of conservation and local and regional investments, consistent with the policies of local and regional water supply agencies.

VII. Mid-Term Action Plan

The focus of the mid-term action plan is maintaining and managing the current Delta system while a long-term solution is being implemented. These include: (1) funding and implementation of early start "no regrets" ecosystem restoration projects; (2) securing long-term operating permits for the State Water Project under the Bay-Delta Conservation Plan; and (3) developing an implementation plan and environmental documentation for the preferred long-term Delta Vision. Specific elements in the Mid-Term Plan include:

- A. **Develop Legislation for the Recommended Delta Vision Alternative.** Authorization of new state facilities and funding of the public share of the recommended Delta Vision projects will likely require legislation. Metropolitan should pursue legislation that addresses all Delta issues in a comprehensive package.
- B. **Develop an Implementation Plan and Environmental Documentation for the Recommended Delta Vision Alternative.** On January 2008, the Governor is scheduled to release his recommendation on a long-term Delta Vision. Following that release, the Department of Water Resources and CALFED, in coordination with Delta stakeholders, will begin preparation of environmental documentation and modeling analysis as needed. The scheduled completion date for this effort is mid-2009.
- C. **Secure Potential Changes to State Water Resources Control Board Standards based on Recommendations from the Delta Vision Process.** The recommendations from the Delta Vision process and the Bay-Delta Conservation Plan may trigger actions at the SWRCB to revise permits of the export projects. Permit changes would be due to likely changes in operations and reservoir release patterns.
- D. **Continue Habitat and Fishery Improvements to Reduce Conflict with Water Supply Operations.** In addition to the habitat and fishery improvements being implemented under the Bay-Delta Conservation Plan, continue to support implementation of other ecosystem improvements to reduce conflicts with water diversions, such as:
 - D1. **Franks Tract – False River Operable Test Gate.** This project is being analyzed to examine its ability to reduce entrainment of Delta Smelt that are present in the central Delta and lower San Joaquin River. The estimated cost is approximately \$30 million to \$50 million depending upon mitigation.
 - D2. **Old-Middle River Siphon** – A project that would build a siphon from Middle River under Old River, along with temporary tidal gates, appears to be a promising project that would effectively move the

SWP's intake away from endangered fish species while adding a large area for new habitat in Old River.

E. Complete Bay-Delta Conservation Plan and Acquire Permit Assurances for Long-Term Operations.

The Bay-Delta Conservation Plan (BDCP) is a comprehensive plan to address the ecosystem needs of the Delta and associated sensitive aquatic species and to provide a mechanism for the issuance of incidental take permits pursuant to the Federal Endangered Species Act (FESA) and the State Endangered Species Act (CESA) for SWP and CVP operations within the legal Delta. The BDCP is being prepared to provide ESA coverage under the Federal law pursuant to Section 10 for the SWP contractors through the development of a Habitat Conservation Plan (HCP). The BDCP will also be used for the issuance of a Biological Opinion pursuant to Section 7 of FESA to the Bureau of Reclamation and the CVP contractors. For SWP compliance with CESA, the BDCP is being prepared to meet the substantive requirements of a Natural Community Conservation Plan (NCCP) that would provide long-term assurances under CESA. However, the DWR and the SWP contractors may seek State take authorization under Section 2081 of CESA rather than through an NCCP. In this event, the BDCP will serve as the foundation for a 2081 permit applications and associated mitigation program.

The development of the BDCP and associated Environmental Impact Statement/Impact Report is scheduled for completion during the third quarter of 2009.

VIII. Long-Term Action Plan

The focus of the long-term action plan is to ensure that the Delta Vision addresses long-standing fundamental issues/conflicts in the Delta and adopts a comprehensive, global approach to a Delta solution that results in a truly sustainable Delta. The elements of a Delta plan include:

A. Delta Restoration and Habitat Protection. The entire Bay-Delta ecosystem needs restoration that is broader than the Bay-Delta Conservation Plan which is focused on issues related to water supply.

Components of this restoration package are as follows:

- **Bay-Delta Conservation Plan** – fishery focused projects providing habitat planning and assurances for the water projects and other infrastructure.
- **Habitat Land Restoration** – part of Delta restoration will be a focus on acquiring and restoring land for environmental benefits.
- **Sustainable Agriculture** – a program to maintain agriculture within the Delta in ways that limit oxidation of peat soils, rebuilds islands, and limits carbon production.
- **Governance** – an authority or conservancy with land use authority within the Delta should be established to manage the restoration.
- **Financing** – restoration should be cost-shared by multiple parties that include water users, owners of other in-Delta infrastructure, a state share for broad-based public benefits, and developer fees from in-Delta development, among others.

B. Water Supply Infrastructure. As part of the comprehensive approach to Delta issues, conveyance of water through or around the Delta must be addressed.

B1. Infrastructure – The Delta Vision process should thoroughly analyze the approaches recommended in the PPIC report that call for either an isolated facility or reduced exports.

- a. **Isolated Facility** – If an isolated facility approach is recommended, it should be located and sized to address seismic safety issues and issues associated with Global Warming such as higher run-off rates and a rising sea level.

- b. Eco-Delta/Reduced Exports** – A recommendation for this approach must address the economic consequences of developing adequate replacement water as well as deal with permitting of alternative projects such as ocean desalination.
- B2. Governance** – A separate agency should be created to govern and operate the State Water Project including any new Delta water supply infrastructure. This agency would be created under state law and be subject to all requirements of law, regulated by the state resource agencies and State Water Resources Control Board. This would allow DWR to focus on its mission as the state's water planning agency and eliminate the confusion created by the state regulating its own activities.
- B3. Financing** – The beneficiaries should pay for any new infrastructure so the state and federal contractors would contract to pay for an isolated facility. A reduced exports approach should be state funded with funding for replacement water.
- C. Flood Control and Storage** – The third component of a comprehensive approach would be construction of flood control and storage facilities. These actions would include levee hardening in critical areas, construction of bypasses to deal with increased runoff associated with climate change and construction of more storage, either surface water or groundwater storage.
- C1. Governance** – No new governance structure is recommended for this component. Existing agencies such as the Army Corps of Engineers, the Bureau of Reclamation, and DWR should manage the flood control projects. New storage facilities should be managed by the agencies that construct them.
- C2. Financing** – The state and federal governments should be responsible for the costs of flood control facilities. New storage facilities should be financed by the beneficiaries of those projects with state financing for the broad public benefits associated with those projects.



● **Board of Directors**
Water Planning and Stewardship Committee

September 11, 2007 Board Meeting

Revised 8-4

Subject

Adopt criteria for conveyance options in implementation of Long Term Delta Plan

Description

Overview In June 2007, Metropolitan's Board approved a Delta Action Plan that provides a framework for actions to build a sustainable Delta and reduce conflicts between water supply conveyance and the environment (Attachment 1). Additional detailed information on potential near-, mid-, and long-term actions, and their water supply planning implications, were provided in written and oral reports to the Board in July and August 2007.

The approved Delta Action Plan also established a process where staff would provide monthly updates to the Board on Delta-related processes and would seek board direction on key issues including: Bay-Delta legislation; administrative decision processes; and legal and regulatory decisions.

This board letter requests further board direction on key conveyance components being discussed in the Governor's Delta Vision Process and the Bay-Delta Conservation Plan. Other near-term actions previously brought before the Board are summarized below.

Near-Term Actions. Recent action by the California Department of Water Resources and U.S. Bureau of Reclamation to curtail pumping of the State Water Project and Central Valley Project from the Delta to protect Delta smelt underscores the incompatibility of how water is conveyed to California's economy and protection of in-Delta native fisheries. While the shutdown was temporary, the underlying need to protect Delta smelt and other fisheries is likely to challenge Metropolitan and other Delta export users with more prolonged water supply curtailments and potentially serious economic consequences throughout the state prior to the implementation of a long-term solution. The following is a set of near-term actions previously brought before the Board that staff is moving forward on:

- **Post-Event Emergency Response Plan.** Analyses from the Delta Risk Management Study state there is a significant risk of levee collapse from an earthquake or flood in the Delta. Consistent with April 2007 board direction regarding implementing a Post-Event Strategy, efforts are being made to secure state approval and funding for a Delta Levees Emergency Preparedness and Response Plan, including pre-placement of rock and material in key locations throughout the Delta.
- **Real-Time Operations and Monitoring.** Current operations of the state and federal pumping plants in the Delta rely heavily on prescriptive flows and water quality standards to assist in maintaining a viable ecosystem for fisheries. However, these standards do not take into account the natural variability of runoff patterns, tidal cycles, temperature and other factors that significantly affect fish migration and consequently salvage of fish at the state and federal pumping plants. In an effort to minimize fish salvage, efforts are being made to fund and implement real-time fish monitoring/tracking along with integrated, real-time operations of the Delta Cross Channel and Sacramento and San Joaquin River flows.
- **Temporary & Reversible Eco-Crescent/Middle River Corridor.** In addition to the real-time operations and monitoring, additional near-term, stop-gap efforts are being further analyzed to turn a portion of the estuary from a habitat area with conflict for smelt into a safe haven, away from the north-to-south movement of water supplies to the Bay Area, Central Valley and Southern California. This effort would include a series of temporary and removable rock barriers with tidal-gates, located strategically on four waterways in the

southern Delta, to create a physical separation between the flows for water supply and the nearby rearing habitat for smelt. These temporary structures would only be in place and operated from February through June when Delta smelt enter the Delta to spawn and rear. This project would include funding for real-time monitoring and operation of these gates, and assessments would be made to ascertain whether a more permanent structure should be constructed later as part of a more comprehensive Delta Vision.

Long-Term Delta Vision Alternatives. In addition to the ongoing effort to resolve near-term issues, two efforts are in progress to develop long-term solutions to resource management conflicts within the Sacramento-San Joaquin Bay Delta system: the Bay-Delta Conservation Plan (BDCP) and the Governor's Delta Vision process. The BDCP is a voluntary effort initiated by water user representatives and state/federal fishery regulatory agencies to develop a conservation plan that will serve as the basis for long-term federal and state endangered species act operational permits for the SWP and CVP. The Governor's Delta Vision process is an effort to develop a specific long-term alternative for addressing Delta resource conflicts and a strategic plan for implementation.

As initially reported to the Board at its workshop in July 2007, four alternatives are under discussion by the Governor's Delta Vision Stakeholder Coordination Group, which advises the Blue Ribbon Task Force. These alternatives include:

1. Existing Delta (with fortified levees)
2. Eco-Crescent/Middle River Corridor Conveyance
3. Dual-Intake Facility (Eco-Crescent + Isolated Conveyance Facility)
4. Fully Isolated Facility

On August 4, 2007, the Delta Vision Stakeholder Coordination Group submitted a report to the Blue Ribbon Committee that narrowed the list of recommended alternatives for further analysis to the Eco-Crescent/Middle River Corridor Conveyance and the Dual-Intake Facility. In addition to these alternatives, the Governor's Blue Ribbon Task Force has received a number of other alternatives from various groups and individuals. The Task Force has begun narrowing down the alternatives and intends to select a Delta Vision to move forward in its Phase I Report to the Governor's cabinet-level Delta Vision Committee. The Phase I Report is due on January 1, 2008,¹ and will include a vision for sustainable management of the Delta's multiple uses, resources and ecosystem.

Phase II of the Governor's Delta Vision effort includes development of a Strategic Plan to drive implementation of a Vision, addressing related governance, funding and system management issues relative to that Vision.

Proposed Direction on Delta Vision Alternatives. In August, the four alternatives listed above were reviewed with the Board. Each alternative was evaluated with feasibility-level modeling of water supply and water quality impacts, and quantitative information regarding environmental enhancement and costs. The alternatives were also compared to the Metropolitan Board principles (April 2006) relating to development of a long-term Delta Vision.

Although Metropolitan staff is continuing to participate in the collaborative BDCP and Delta Vision efforts to further analyze the pros and cons of these alternatives, after a review of existing analyses and board policies, staff proposes the Board adopt the following criteria to further clarify Metropolitan's position on the water supply conveyance element of the long-term solution:

1. Provide water supply reliability. Conveyance options need to provide water supply reliability consistent with DWR's most recent State Water Project Reliability Report (2005).
2. Improve Export Water Quality. Conveyance options should reduce bromide and dissolved organic carbon concentrations. Existing in-Delta intakes cause direct conflict between the need to reduce organic carbon to meet stricter urban drinking water standards, and the need to increase carbon to promote a healthy food web for fish.

¹ The Delta Vision Committee is comprised of the Secretary of Resources as Chair, and the Secretaries of Business, Transportation & Housing, Food & Agriculture, and Cal-EPA; and the President of the California Public Utilities Commission.

3. Allow Flexible Pumping Operations in a Dynamic Fishery Environment. Water supply conveyance options should allow the greatest flexibility in meeting water demands by taking water where and when it is least harmful to migrating salmon and in-Delta fish species. All options should reduce the inherent conflict between fisheries and water conveyance.
4. Enhance ~~Delta Ecosystem Fishery Habitat Throughout Delta~~. Conveyance options should provide the ability to restore fishery habitat throughout the entire Delta (~~not just in partial areas~~) and minimize disruption to tidal food web processes, and provide for fluctuating salinity levels.
5. Reduce Seismic Risks. Conveyance options should provide significant reductions in risks to export water supplies from seismic-induced levee failure and flooding.
6. Reduce Climate Change Risks. Conveyance options should reduce long-term risks from salinity intrusion associated with rising sea levels. Intake locations should be able to withstand an estimated 1- to 3-foot sea-level rise in the next 100 years.

Future Recommendations. As outlined in Metropolitan's Delta Action Plan, staff will seek board direction on other key issues including funding for environmental restoration, governance and financing issues, levee improvements, potential infrastructure or floodway corridors, sizing and location of an isolated facility component, potential legislation, and other key components of the Governor's overall Delta Vision.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). For future, and not yet known, proposed projects, the appropriate lead agencies will be responsible for complying with all applicable federal and state environmental laws and regulations.

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and conveyance criteria, as described in this board letter, for water supply conveyance options in a long-term Delta Vision.

Fiscal Impact: None

Business Analysis: The recommended conveyance criteria would be beneficial in reducing conflict while enhancing the Delta ecosystem, water quality, and water supply reliability. It would also reduce longer-term risks associated with seismic-induced flooding and sea-level rise.

Option #2

Do not adopt conveyance criteria.

Fiscal Impact: None

Business Analysis: Metropolitan's ability to influence conveyance criteria will be significantly reduced. Criteria established by others may not meet Metropolitan's water supply and financial interests.

Staff Recommendation

Option #1

<i>Stephen M. Arakawa</i>	9/7/2007
Stephen N. Arakawa	Date
Manager, Water Resource Management	

<i>Debra C. Man</i>	9/7/2007
for Jeffrey Kightlinger	Date
General Manager	

Attachment 1 – Metropolitan Water District Delta Action Plan

BLA #5548

METROPOLITAN WATER DISTRICT DELTA ACTION PLAN

I. Overview

The Delta is the hub of California's water supply and is critically important to the entire state. The Delta is in a state of ecological crisis and is not sustainable unless action is taken. Building a sustainable Delta will require significant investment and will take decades. The Delta Action Plan must prioritize immediate short-term actions to stabilize the Delta while an ultimate solution is selected, and mid-term steps to maintain the Delta while the long-term solution is implemented. By 2020, California should have a long-term solution for the Delta in place that can be adjusted and adaptively managed to deal with the coming changes from climate change and California's continued population growth.

II. Short-Term Action Plan

The Governor's Delta Vision Process calls for a recommendation from the Delta Vision Blue Ribbon Task Force to be made by January 2008. SB 27 (Simitian, et al.) urges the Task Force to make its recommendation based on the findings of the Public Policy Institute of California Delta Report for legislation to be enacted in 2008. While 2008 will be the year for selecting a course of action on the Delta, actions must be taken over the next 18 months to stabilize the current situation. These actions include the following: securing state and federal Endangered Species Acts take authorization; emergency preparedness steps to prepare for possibility of catastrophic failure in the event of earthquake or flood; actions to enhance habitat for Delta smelt and other pelagic species; completion of the Bay-Delta Conservation Plan (BDCP); and actions to begin work on ecosystem restoration projects that will help species regardless of which ultimate solution is selected (e.g., marsh restoration, island rebuilding.)

III. Mid-Term Action Plan

Upon selection and enactment of an ultimate Delta solution, it will likely take ten years or more to complete environmental documentation and construct new facilities. During this period, it will be necessary to maintain the stabilization process of the Delta through the following actions: continue implementation of the BDCP projects; continue with selected habitat and fishery improvements to improve Delta native species; begin implementing flood control protections, including bypasses and levee improvements; finalize site selection and environmental documentation for new storage projects; implement new governance structures for managing the Delta; and undertake implementation of the long-term Delta solution.

IV. Long-Term Action Plan

The Long-Term Action Plan must take a global, comprehensive approach to the fundamental issues and conflicts in the Delta to result in a truly sustainable Delta. A piecemeal approach cannot satisfy the many stakeholders that have an interest in the Delta and will fail; there must be a holistic approach that deals with all issues simultaneously. In dealing with the basic issues of the Delta, solutions must address the physical changes required, as well as the financing and governance. There are three basic elements that must be addressed: Delta ecosystem restoration; water supply conveyance; and flood control protection and storage development.

A. Delta Ecosystem Restoration – A complete Delta restoration plan must address land use, growth, agriculture, water usage and conveyance, and the aquatic and land habitat of the Delta through the following elements:

- **Bay-Delta Conservation Plan** – The BDCP is a subset of Delta restoration primarily focused on the aquatic environment of the Delta and will address fishery issues.

- **Habitat Land Acquisition and Restoration** – A portion of the Delta will need to be restored to native marsh habitat for protection of aquatic and terrestrial species.
- **Sustainable Agriculture** – Programs will be needed to maintain sustainable agriculture within the Delta in ways that limit oxidization of soils, rebuild Delta islands, limit carbon production, improve water quality and provide habitat opportunities.
- **Governance** – Management of Delta restoration will require a governance structure such as a conservancy or special district that has financing and land use powers and can manage a program within multiple counties.
- **Financing** – Costs of restoration must be shared by multiple parties with water exporters and other utilities helping finance the BDCP, the state paying for broad public benefits, developers within the Delta area paying for development rights, etc.

B. Water Supply Infrastructure – The current practice of using Delta channels and levees for water conveyance is not sustainable. Delta species require fluctuating salinity levels that will be harmful to drinking water quality. The levees are unstable and pose a constant threat of collapse. In addition, global warming threatens water supply with rising sea levels and increased flooding. Either new Delta conveyance infrastructure must be constructed or there will be significant reductions in Delta exports requiring new water facility development elsewhere to replace lost water supplies. Important elements of this needed infrastructure include:

- **Isolated Facility** – If water supply is to be maintained, that water must be separated from Delta water supplies through construction of an isolated facility either in or around the Delta. The three isolated facility alternatives in the PPIC Report must be analyzed to determine which performs best for water supply reliability, is cost-effective, protects against earthquakes and floods, provides water quality, deals with rising sea levels and allows for Delta salinity fluctuation for native species protection.
- **Eco-Delta/Reduced Exports** – If an isolated facility is not constructed, the PPIC Report recommends that a fluctuating salinity Delta be achieved primarily through a reduction in water exports. This approach must be thoroughly analyzed to determine the economic consequences of loss in water supply, whether reduced exports will actually protect species, and identify additional water supply facilities that would be required.
- **Governance** – Management of the State Water Project should be given to a separate agency tasked with the single mission of managing and operating the Project. This would separate the utility function from the Department of Water Resources thereby removing conflicts within DWR in its role of operating a utility for certain contractors while providing state-wide water planning. Appropriate forms of such an independent agency include a special district or a joint powers authority. This new entity would continue to be regulated by state and federal agencies and all applicable laws.
- **Financing** – State and federal water contractors should pay for the operation and management of the water supply projects, including construction of new water infrastructure such as an isolated facility. A state decision to reduce exports should be financed by the state including payment for lost agriculture lands and financing for replacement of water supplies.



● **Board of Directors**
Water Planning and Stewardship Committee

August 19, 2008 Board Meeting

8-11

Subject

Approve Delta Governance Principles

Description

Overview

In June 2007, the Board approved a Delta Action Plan that provides a framework for actions to recover the ecosystem and modify the Delta's water conveyance system. In September 2007, the Board adopted criteria for Delta conveyance needs that provide a benchmark to assess various proposals. The Board principles also established a process where Metropolitan staff would seek board direction to assist in moving forward on key issues including: conveyance improvements, governance, legislation, and legal and regulatory decisions.

At the Bay-Delta Special Committee meeting of July 22, 2008, an Ad Hoc Subcommittee was formed to evaluate the proposal for addressing Bay-Delta resource issues that are being developed by the Governor's Delta Vision Blue Ribbon Task Force (BRTF) as part of the Delta Vision Strategic Plan. Subcommittee Directors Sutley, Griset, Bakall and Petersen met and reviewed the BRTF's governance structure proposal. This letter details recommendations for consideration relative to Delta Governance. The BRTF is meeting monthly through October and is expected to finalize its Strategic Plan at its October 17, 2008 meeting.

Preliminary Recommendations Regarding Governance Principles by the Governor's BRTF

In November 2007, the BRTF adopted a Vision Plan (Vision) describing its overarching vision for future of the Delta. Since then it has been developing a Delta Vision Strategic Plan (Strategic Plan) (Attachment 1) setting out a plan for implementing the Vision. In the second draft of the Strategic Plan, the BRTF is proposing significant changes to the current structure of governing institutions and relationships creating the following new institutions and authorities:

- California Delta Ecosystem and Water Council
 - A proposed five- to seven-member Governor-appointed body (subject to Senate confirmation).
 - The Council would adopt a detailed California Delta Ecosystem and Water Plan in which all underlying state and federal agencies would be required to confirm their actions relative to the Delta.
 - The Council would have broad authority to make decisions assuring achievement of the co-equal goals of ecosystem restoration and water supply and to approve all water and other infrastructure projects in the Delta.
 - A Delta Science and Engineering Board would be established within the Council which would serve in an advisory role to the Council and other agencies.
 - A Delta Operations Team would be established within the Council as a "Delta water manager", providing coordination and making all operational decisions relative to the State Water Project (SWP) and Central Valley Project (CVP) pumping and Delta flows, including what inflows, outflows and exports are necessary.

- California Water Utility
 - Title to the SWP would be moved from the Department of Water Resources to a new California Water Utility which would operate under its own governing structure.
 - Governing entity composition unknown at this time.
 - The Utility would be structured to eventually take ownership and control of the Federal Central Valley Project.
- Delta Conservancy
 - A governing board appointed by the Delta Water and Ecosystem Council.
 - A State-authorized Conservancy would implement ecosystem restoration projects within the Delta. This Conservancy would be structured and operate similar to other Conservancies within California.

In addition, changes to existing institutions (Attachment 2) include:

- Additional Delta Protection Commission authority to better coordinate and regulate land use among local land use planning jurisdictions;
- Additional State Water Resources Control Board resources to perform better data gathering and adjudication of water rights and implementation of water quality control plans; and
- Additional Department of Water Resources integrated water management data gathering and planning responsibilities (assumes DWR would no longer manage the SWP).

Analysis

The Ad Hoc Subcommittee reviewed the overall governance structure being proposed in the current draft of the BRTF Strategic Plan. Effective governance for the Delta is critical to meeting Metropolitan's interests in a reliable water supply and healthy Delta. There are currently multiple State and Federal agencies with responsibilities in the Delta whose decisions directly affect Metropolitan's SWP supplies. Clarity of responsibilities, accountability for decisions and actions, and avoidance of overlapping authorities is essential for effective future governance. Existing agencies should be reformed as necessary to be effective before new entities are created to fill similar roles. There also needs to be mechanisms to accommodate consistency among the State and Federal entities in implementing a common plan for the Delta.

The Ad Hoc Subcommittee concurred that the proposals to create a California Water Utility and Delta Conservancy have merit and should be developed in further detail for discussion. Additionally, efforts to enhance the functions of the SWRCB and Delta Protection Commission have merit. The Ad Hoc Subcommittee focused on the role of the Delta Ecosystem and Water Council and believes that Metropolitan should provide specific comments on the authorities and functions of that body. As envisioned in the BRTF proposal, this new body would have broad authorities to make decisions including decisions that directly affect water supplies Metropolitan receives through the SWP and potential infrastructure improvements to the SWP. The Council and the governing body would be quasi-legislative with bond authority, defining statewide interests and risks. This Council would also receive and allocate money to accomplish the goals of the Strategic Plan. Additional description of the proposed functions and the governance proposal overall, are detailed in the Strategic Plan (Attachment 1) on pages 15-28.

Recommendations

The following recommendations as proposed by the Ad Hoc Subcommittee are made relative to the creation, authorities and functions of the proposed Delta Ecosystem and Water Council (DEWC).

1. The DEWC should function primarily to track accomplishment of Strategic Plan objectives and to report to the Legislature and Governor on progress in meeting plan goals and changes necessary to achieve goals. This should be done by providing oversight of decisions to allocate new bond money dedicated to delta ecosystem

improvement; commenting on agency decisions that are likely to have far-reaching effects, and providing periodic detailed review of plan implementation including the effectiveness of the implementing agencies in meeting plan goals.

2. The DEWC should use the final Strategic Plan as the guiding document for implementing the Vision. It should develop general success criteria (including support for incentives that encourage early actions) and identify the appropriate existing agencies to implement objectives in the Strategic Plan (e.g., DWR, SWRCB, Delta Conservancy, etc.) with timelines for performance. State agencies making decisions affecting the Delta would pursue the objectives and make decisions within their statutory authority and consistent with the Strategic Plan. Memoranda of agreement or other mechanisms should be pursued with federal agencies to secure their participation. The proposed detailed California Delta Ecosystem and Water Plan is unnecessary as the Strategic Plan can be made sufficient to identify responsibilities and necessary tasks
3. DEWC members should have diverse geographical representation in addition to technical qualifications as outlined by the draft strategic plan.
4. DEWC members should not be subject to term limits and should be eligible for reappointment.
5. The DEWC should not appoint the members of the Delta Conservancy. These appointments should be made pursuant to the legislation creating the Delta Conservancy.
6. The interface of the State and Federal agencies as ex-officio members is appropriate; however, County government should be also represented as part of this structure.

Future Board Direction on Other Key Policy Issues

As outlined in Metropolitan's Delta Action Plan, staff will seek board direction on other key components of the Governor's overall Delta Vision.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

By Minute Item 47232, dated September 11, 2007, the Board adopted criteria for support of conveyance options in implementation of a long-term Delta improvement plan.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA Determination for Option #2:

None required

Board Options

Option #1

Approve the Ad Hoc Subcommittee recommendations as outlined in the board letter.

Fiscal Impact: None

Business Analysis: None

Option #2

Do not approve the Ad Hoc Subcommittee recommendations as outlined in the board letter.

Fiscal Impact: None

Business Analysis: None

Recommendation

Option #1


Roger K. Patterson

Assistant General Manager

8/13/2008

Date


Jeffrey Kightlinger

General Manager

8/13/2008

Date

Attachment 1 – Second draft “Delta Vision Strategic Plan”

Attachment 2 – First Staff Draft Governance Structure

BLA #6283

AMENDED IN SENATE FEBRUARY 26, 2009

SENATE BILL

No. 12

Introduced by Senator Simitian

December 1, 2008

~~An act to add Division 26.6 (commencing with Section 79600) to the Water Code, relating to financing a water quality, environmental enhancement, and water supply reliability program, by providing the funds necessary therefor through an election for the issuance and sale of bonds of the State of California and for the handling and disposition of those funds.~~ *An act to amend Section 29735 of, and to add Section 29740.1 to, the Public Resources Code, and to add Division 26.8 (commencing with Section 79850) to the Water Code, relating to the Sacramento-San Joaquin Delta.*

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Simitian. Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009.

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

This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009. The bill would establish the Delta Ecosystem and Water Council. The council would be required to prepare and adopt

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a plan referred to as the California Delta Ecosystem and Water Plan (plan) to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. The council would be required to establish a goal for the adoption of the plan by December 1, 2010. If the plan is not completed by that date, the council would be required to adopt an interim strategic plan. The plan would be required to include specified components, including species protection requirements, Delta water flow and water quality requirements, and information relating to land use in the Delta.

The council would have the exclusive authority to determine the consistency of any project proposed or approved by a state agency or local government with the plan, and would be required to assume responsibility for any conservation or habitat management plan developed for the Delta, ensure that federal and state actions are consistent with the plan, receive and allocate funds to advance policies and programs related to the Delta, establish policies and procedures that ensure that the operations of water export systems are consistent with the plan, and take other action on behalf of the Delta. By authorizing the council to impose requirements on projects undertaken by local governments, the bill would impose a state-mandated local program.

The bill would authorize the council to impose a per-acre-foot fee on water diversions within the Delta watershed and a fee on any water conveyed through or around the Delta. The moneys generated by the imposition of the fee would be required to be deposited in the Delta Ecosystem and Water Fund, which would be established in the State Treasury. The moneys in the fund, upon appropriation by the Legislature to the council, would be required to be expended by the council for the exclusive purpose of carrying out the bill's provisions.

The bill would establish the California Delta Conservancy to implement the ecosystem restoration elements of the plan. The bill would establish the Delta Science and Engineering Board to carry out a Delta science and engineering program under the direction of the council.

The bill would revise the membership of the Delta Protection Commission to include one of the members of the Central Valley Flood Protection Board, or that member's sole designee. The bill would require the commission to extend invitations to specified federal agencies to participate in the activities of the commission in a nonvoting capacity. The bill would require the commission to revise its resource management plan to be consistent with the plan required to be adopted

by the council. The bill would require Delta counties, as defined, and the cities within those counties, to revise their general plans and submit the revised plans to the commission. By imposing requirements on those counties and cities with regard to the preparation of their general plans, the bill would impose a state-mandated local program. The commission would be required to review and certify the general plans of those counties and cities for consistency with its resource management plan and the plan adopted by the council.

(2) 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.

~~Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. Under existing law, various state agencies administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta.~~

~~This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009, which, if approved by the voters, would authorize, for the purposes of financing a water quality, environmental enhancement, and water supply reliability program, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of \$6,000,000,000. The bill would require the Secretary of State to submit the bond act to the voters at the November __, _____, statewide general election.~~

~~The bill would establish in state government the Delta Water and Land Use Authority, prescribe the composition of its board of directors, and grant to the authority a broad range of powers relating to the preservation of the Delta ecosystem and the delivery of a reliable state water supply. The bill would authorize the authority to contract to design, construct, and own one or more facilities to move water from the Sacramento River to federal and state pumping facilities on behalf of the State Water Project, the federal Central Valley Project, and local water agencies that can reasonably be served by those facilities.~~

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~~The bill would authorize the authority to exercise the powers and duties of the Department of Water Resources with respect to the financing, design, construction, ownership, and operation of those facilities. The authority would succeed to the powers and duties of the California Bay-Delta Authority, which would cease to exist on the date on which the authority conducts its first meeting. The bill would authorize the authority to issue revenue bonds to finance the design, environmental review, permitting, and construction of those facilities. The bill would authorize the authority to impose a fee for the transmission of water through these facilities, and would continuously appropriate funds generated by that fee to the authority to repay the revenue bonds and to pay other costs, including costs associated with the operation and maintenance of the facility and the expenses of the authority.~~

~~The bill would require the authority to impose other fees, including a fee, not to exceed \$50 per acre-foot of water transmitted through the facilities, or otherwise pumped from the Delta, as specified, on federal and state contractors and affected local water agencies. The bill would authorize the authority to impose a fee on specified water users to mitigate impacts on Delta ecological functions caused by their diversions. The bill would require the funds generated by these fees to be deposited in the Clean Drinking Water, Water Quality Improvement, and Environmental Enhancement Fund, which the bill would establish. Funds generated by these fees would be continuously appropriated to the authority for an ecosystem restoration program. Proceeds generated from the issuance of general obligations bonds would be deposited in the fund. These proceeds would be continuously appropriated to the authority for capital outlay projects in accordance with the bill's provisions.~~

~~The bill would establish within the California Coastal Commission the Delta Watershed Conservancy. The conservancy would be required to implement projects and programs, within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and the watershed of the Trinity River, to restore and enhance the bay-delta ecosystem and improve water quality. The bill would require the authority to adopt or reject each decision of the conservancy.~~

~~The bill would subject any approval of development by a city or county in specified zones of the Delta, and certain lands adjacent to the Delta, to review by the Delta Protection Commission. The commission would be prohibited from approving that development unless specified~~

requirements are met. The bill would require the authority to adopt or reject these land use decisions of the commission. Public agencies would be required to manage agricultural lands they own within the Delta in a specified manner.

The bill would provide that its provisions would only become operative if a specified measure is approved by the voters at the November __, ____ statewide general election.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 29735 of the Public Resources Code is
2 amended to read:
3 29735. There is hereby created the Delta Protection
4 Commission consisting of ~~23~~ 24 members as follows:
5 (a) One member of the board of supervisors, or his or her
6 designee, of each of the five counties within the ~~delta~~ Delta whose
7 supervisory district is within the primary zone shall be appointed
8 by the board of supervisors of the county.
9 (b) (1) Three elected city council members shall be selected
10 and appointed by city selection committees, from regional and
11 area councils of government, one in each of the following areas:
12 (A) One from the north ~~delta~~ Delta, consisting of the Counties
13 of Yolo and Sacramento.
14 (B) One from the south ~~delta~~ Delta, consisting of the County
15 of San Joaquin.
16 (C) One from the west ~~delta~~ Delta, consisting of the Counties
17 of Contra Costa and Solano.
18 (2) A city council member may select a designee for purposes
19 of paragraph (1).
20 (c) (1) One member each from the board of directors of five
21 different reclamation districts that are located within the primary
22 zone who are residents of the ~~delta~~ Delta, and who are elected by
23 the trustees of reclamation districts within the following areas:
24 (A) Two members from the area of the North Delta Water
25 Agency as described in Section 9.1 of the North Delta Water
26 Agency Act (Chapter 283 of the Statutes of 1973), provided at
27 least one member is also a member of the Delta Citizens Municipal
28 Advisory Council.

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

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

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

5 (l) *A member of the Central Valley Flood Protection Board, as*
6 *designated by the board or that member’s sole designee.*

7 *SEC. 2. Section 29740.1 is added to the Public Resources Code,*
8 *to read:*

9 *29740.1. The commission shall invite the United States Army*
10 *Corps of Engineers, United States Fish and Wildlife Service, United*
11 *States Bureau of Reclamation, and other appropriate federal*
12 *agencies to participate in the activities of the commission in a*
13 *nonvoting capacity to better assess and coordinate flood protection,*
14 *water supply, and ecosystem protection issues.*

15 *SEC. 3. Division 26.8 (commencing with Section 79850) is*
16 *added to the Water Code, to read:*

17
18 *DIVISION 26.8. SACRAMENTO-SAN JOAQUIN RIVER*
19 *DELTA, CLEAN DRINKING WATER, WATER SUPPLY*
20 *SECURITY, AND ENVIRONMENTAL IMPROVEMENT ACT OF*
21 *2009*

22
23 *CHAPTER 1. GENERAL PROVISIONS*
24

25 *79850. This division shall be known and may be cited as the*
26 *Sacramento-San Joaquin River Delta, Clean Drinking Water,*
27 *Water Supply Security, and Environmental Improvement Act of*
28 *2009.*

29 *79851. The Legislature finds and declares all of the following:*

30 (a) *The Sacramento-San Joaquin River Delta is a web of*
31 *channels, natural habitat, and reclaimed islands at the confluence*
32 *of the Sacramento and San Joaquin Rivers. It forms the eastern*
33 *portion of the wider San Francisco Bay Estuary, which also*
34 *includes the San Francisco, San Pablo, and Suisun Bays. The Delta*
35 *collects water from California’s largest watershed, which*
36 *encompasses roughly 45 percent of the state’s surface area and*
37 *stretches from the eastern slopes of the coastal ranges to the*
38 *western slopes of the Sierra Nevada and Cascade mountain ranges.*

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1 ***(b) The Delta supports a unique and irreplaceable combination***
2 ***of environmental and economic values, including all of the***
3 ***following:***

4 ***(1) The San Francisco Bay/Sacramento-San Joaquin Delta***
5 ***Estuary is a unique ecosystem. The Delta and the adjacent Suisun***
6 ***Marsh, an integral part of the Delta ecosystem, provide habitat***
7 ***for 700 species, including 12 species listed under either the federal***
8 ***or state endangered species laws. Eighty percent of the state's***
9 ***commercial fishery species live in or migrate through the Delta.***
10 ***It is a major stopping point for hundreds of thousands of migrating***
11 ***birds along the Pacific Flyway. The Suisun Marsh alone contains***
12 ***more than 10 percent of California's remaining wetlands.***

13 ***(2) Two-thirds of the state's residents rely on the Delta for part***
14 ***or all of their drinking water. One-sixth of all irrigated lands in***
15 ***the nation are located in this watershed and water exported from***
16 ***the Delta irrigates 45 percent of the fruits and vegetables produced***
17 ***in the United States. California's water supply is limited and***
18 ***demand will grow as the state's population increases. Despite***
19 ***policies to encourage more efficient water use, residential use***
20 ***measured in gallons per capita per day remains unchanged since***
21 ***the 1970s and agriculture uses the same volumes of water as in***
22 ***the 1970s though irrigated lands have shifted to orchards,***
23 ***vineyards, and other permanent crops.***

24 ***(3) Delta lands have contributed significantly to the agricultural***
25 ***economy in California. Supporting a population of about 470,000,***
26 ***the cities, towns, and settlements within the Delta are of significant***
27 ***historical, cultural, and economic value.***

28 ***(4) Three state highways, three rail lines, and two deepwater***
29 ***channels cross the Delta and the Delta serves two inland ports.***
30 ***Most of these transportation corridors serve other areas of the***
31 ***state.***

32 ***(5) Hundreds of gas lines, five high voltage lines, and critical***
33 ***water supply aqueducts that serve public health and safety needs***
34 ***cross the Delta, including multiple Delta islands. The Delta is also***
35 ***home to numerous underground natural gas storage sites.***

36 ***(6) The Delta's 635 miles of boating waterways are served by***
37 ***138 marinas containing 11,700 in water boat slips and dry storage***
38 ***for 5,500 boats. In 2000, there were an estimated 6.4 million***
39 ***boating-related visitor days, with 2.13 million boating trips. Other***
40 ***major recreational activities in the Delta include fishing,***

1 waterfowl, and upland game bird hunting, wildlife viewing, bird
2 watching, and windsurfing.

3 (7) The Delta is the natural outlet for a 42,500 square mile
4 watershed that includes the central valley and the western slope
5 of the Sierra Nevada from Fresno to north of Mount Shasta. As
6 such, it is the main conduit for flood waters to flow out to the
7 ocean. The Delta itself is protected by extensive, but fragile, flood
8 management facilities, including about 1,100 miles of levees in
9 the Delta and about 230 miles of levees in the Suisun Marsh. These
10 levees protect about 65 islands and tracts in the Delta. Most of
11 these levee-protected lands are below sea level; some areas are
12 as much as 25 feet below sea level.

13 (c) The Delta cannot sustain important environmental and
14 economic values under current conditions. All of these values
15 either are already in significant decline or are at risk of sudden
16 failure. Several factors are intensifying the problems, including
17 all of the following:

18 (1) Land subsidence, sea level rise, and changes in climate make
19 Delta levees increasingly vulnerable to failure from earthquakes,
20 floods, and other causes. Over the next 50 years, there is a
21 two-thirds chance of a catastrophic levee failure in the Delta,
22 leading to flooding of multiple islands and the intrusion of
23 seawater. The Department of Water Resources estimates that a
24 large earthquake near the Delta would cause major interruptions
25 in water supplies for southern California, the San Joaquin Valley,
26 and the San Francisco Bay area, as well as disruptions of power,
27 road, and shipping lines, costing the state's economy as much as
28 \$40 billion. These failures also would create major environmental
29 disruptions and local flooding risks.

30 (2) Endangered species and fisheries have continued to decline
31 in the Delta and disruptive nonnative species continue to invade.
32 In the fall of 2004, routine fish surveys registered sharp declines
33 in the numbers of several open-water (pelagic) species, including
34 the Delta smelt, already listed as threatened under the federal and
35 state endangered species laws. Subsequent surveys have confirmed
36 the trend, raising concerns that the Delta smelt, which are
37 sometimes seen as an indicator of ecosystem health in the Delta,
38 risks extinction if a solution is not found quickly. In the winter of
39 2008, salmon populations reliant on the Delta declined

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1 *precipitously, contributing to closure of the salmon fishery that*
2 *year.*

3 *(3) Delta water quality remains at risk from salts entering from*
4 *the ocean and the central valley's agricultural drainage, as well*
5 *as from pesticides and metals coming from agricultural and urban*
6 *lands. Chronic toxicants continue to be a problem, and episodic*
7 *toxic events from urban and agricultural applications are also a*
8 *major problem.*

9 *(4) Organic soils in the Delta contribute precursors for*
10 *trihalomethanes, a known carcinogen. Removing trihalomethanes*
11 *from drinking water is very costly.*

12 *(5) Regional population and economic growth have increased*
13 *pressure to urbanize Delta lands near major transportation routes*
14 *and urban centers. This "hardening" of Delta lands simultaneously*
15 *raises the costs of flood management and reduces the flexibility*
16 *of land management options. Unlike most other activities in the*
17 *Delta, urbanization is generally irreversible. Additionally,*
18 *urbanization is self-accelerating. Urbanization in one location*
19 *significantly increases the value of adjacent lands. This, coupled*
20 *with declining profit margins for farming, will increase the*
21 *pressure to convert farmlands to subdivisions. This shift will come*
22 *at the expense of habitat protection and other services, such as*
23 *water quality and water supply.*

24 *(d) It is necessary to implement the recommendations of the*
25 *Delta Vision Blue Ribbon Task Force to develop a durable vision*
26 *for sustainable management of the Delta with the goal of managing*
27 *the Delta over the long term to restore and maintain identified*
28 *functions and values that are determined to be important to the*
29 *environmental quality of the Delta and the economic and social*
30 *well-being of the people of the state.*

31 *(e) To achieve long-term environmental sustainability and*
32 *protect California's economy, it is necessary to codify the coequal*
33 *goals of restoring the Delta ecosystem and creating a more reliable*
34 *water supply for California. To achieve the desired coequal goals,*
35 *strong participation of local, state, and federal agencies is*
36 *necessary to better integrate their responsibilities and capacities*
37 *into an effective Delta plan.*

38 *(f) The State of California must recognize and enhance the*
39 *unique cultural, recreational, and agricultural values of the*

1 *California Delta as an evolving place, an action critical to*
2 *achieving the coequal goals.*

3 *(g) The ecosystem of the Delta must be restored as the heart of*
4 *a healthy estuary.*

5 *(h) Any effort to balance the coequal goals will require a*
6 *sustained effort promoting statewide water conservation, efficiency,*
7 *and sustainable use of California's natural resources.*

8 *(i) It shall be the policy of the State of California to build*
9 *facilities to improve the existing water conveyance system and*
10 *expand statewide storage, and operate both to achieve the coequal*
11 *goals.*

12 *(j) It shall be the policy of the State of California to reduce risks*
13 *to people, property, and state interests in the Delta by means of*
14 *effective emergency preparedness, appropriate land uses, and*
15 *strategic levee investments.*

16 *(k) To achieve the coequal goals the State of California must*
17 *establish a new governance structure with the authority,*
18 *responsibility, accountability, science support, and secure funding*
19 *to achieve these goals.*

20 *(l) Land use decisions in the Delta should be based on public*
21 *safety.*

22 *(m) Despite the enactment of the*
23 *Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992,*
24 *development has continued to expand in the Delta, potentially*
25 *threatening state interests and heightening safety risks in the*
26 *region. Substantial population increases in the region are projected*
27 *for the coming decades, increasing urbanization pressures in both*
28 *the secondary zone and the primary zone. In addition to increasing*
29 *flood risks, urban development outside of the primary zone can*
30 *also foreclose critical future ecosystem revitalization and climate*
31 *change adaptation opportunities, as well as limit improvements*
32 *to the existing water export system. Active floodplains are critical*
33 *ecosystem revitalization sites, and should not be cut off by levees*
34 *protecting new development. Lands just above current tidal*
35 *elevation are crucial sites to accommodate long-range sea level*
36 *rise, and should be conserved for that reason.*

37 *79852. By enacting this division, it is the intent of the*
38 *Legislature to facilitate the implementation of a program for the*
39 *sustainable management of the Delta ecosystem and to establish*
40 *a governance structure that will coordinate efforts across state*

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1 agencies to develop a legally enforceable California Delta
2 Ecosystem and Water Plan.

3 79853. Unless the context requires otherwise, the definitions
4 set forth in this section govern the construction of this division:

5 (a) "Acquisition" means the acquisition of a fee interest or any
6 other interest, including easements, leases, and development rights.

7 (b) "Adaptive management" means a method of constructing
8 and operating physical facilities in a manner that maximizes
9 operational flexibility in response to changing physical and
10 biological conditions.

11 (c) "Bay-Delta" means the San Francisco Bay/Sacramento-San
12 Joaquin Delta.

13 (d) "Bay Delta Conservation Plan" means any natural
14 communities conservation plan or habitat conservation plan being
15 developed by the Natural Resources Agency through a consortium
16 of public agencies and nonprofit organizations to protect and
17 restore endangered and threatened species and their habitat in
18 the Delta.

19 (e) "Board," or "board of directors," or "board members"
20 means the board of directors of the council.

21 (f) "CALFED" means the consortium of state and federal
22 agencies with management and regulatory responsibilities in the
23 Bay-Delta.

24 (g) "CALFED Bay-Delta Program" means the undertaking by
25 CALFED to develop and implement, by means of the final
26 programmatic environmental impact statement/environmental
27 impact report, the preferred programs, actions, projects, and
28 related activities that will provide solutions to identified problem
29 areas related to the Bay-Delta ecosystem, including, but not limited
30 to, the Bay-Delta and its tributary watersheds.

31 (h) "California Delta Conservancy" or "conservancy" means
32 the conservancy established pursuant to Section 79890.

33 (i) "California Environmental Quality Act" means the
34 California Environmental Quality Act as set forth in Division 13
35 (commencing with Section 21000) of the Public Resources Code.

36 (j) "Delta" means the area of the Sacramento-San Joaquin
37 Delta that is defined in Section 12220, and includes the Yolo
38 Bypass and the Suisun Marsh.

39 (k) "Delta counties" mean the Counties of Contra Costa,
40 Solano, Yolo, Sacramento, and San Joaquin.

1 (l) "Delta Ecosystem and Water Council" or "council" means
2 the council established by Section 79860.

3 (m) "Delta Ecosystem and Water Plan" or "plan" means a
4 plan developed pursuant to this division by the council.

5 (n) "Delta Protection Commission" or "commission" means
6 the commission established pursuant to Section 29735 of the Public
7 Resources Code.

8 (o) "Delta watershed" means ____.

9 (p) "Department" means the Department of Water Resources.

10 (q) "Fund" means the Delta Ecosystem and Water Fund
11 established by Section 79885.

12 (r) "Nonprofit organization" means any nonprofit corporation
13 formed pursuant to the Nonprofit Public Benefit Corporation Law
14 (Part 2 (commencing with Section 5110) of Division 2 of Title 1
15 of the Corporations Code) and qualified under Section 501(c)(3)
16 of the United States Internal Revenue Code.

17 (s) "Public water agency" means a public entity, as defined in
18 Section 514, that provides water service, as defined in Section 515.

19

20 CHAPTER 2. DELTA ECOSYSTEM RESTORATION AND WATER
21 SUPPLY RELIABILITY

22

23 79855. The Legislature finds and declares all of the following:

24 (a) The coequal goals of restoring the Delta ecosystem and
25 creating a more reliable water supply in California are the
26 foundation of water and ecosystem policymaking.

27 (b) All state agencies with significant responsibilities relating
28 to the Delta should implement their statutory duties in a manner
29 that advances these coequal goals.

30 (c) All water project operational agreements, contracts for
31 water use, water right permits, and financial agreements that
32 impact the Delta should reflect and promote these coequal goals.

33

34 CHAPTER 3. STATEWIDE WATER CONSERVATION, EFFICIENCY,
35 AND SUSTAINABLE USE

36

37 79858. The Legislature finds and declares that the following
38 policies should be incorporated into state planning, programmatic,
39 and regulatory actions:

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1 (a) *The reduction of urban, residential, industrial, and*
2 *agricultural water demand through improved water use efficiency*
3 *and conservation, starting by achieving a statewide 20 percent*
4 *per capita reduction in water use by 2020.*

5 (b) *The improvement of statewide water use efficiency and*
6 *conservation by use of tiered pricing, incentives and grants, basin*
7 *water planning for both surface and groundwater, educational*
8 *programs, and a water “loading order” that gives first priority to*
9 *conservation and efficiency improvements.*

10 (c) *The reduction of urban per capita water use over the*
11 *long-term by requiring water agencies to reduce water use per*
12 *capita at least sufficiently to offset population growth and to*
13 *require communities to include all available water use efficiencies*
14 *in land use plans and actions.*

15 (d) (1) *The establishment of a statewide agricultural water*
16 *conservation target by 2010 of at least an estimated 800,000*
17 *acre-feet of agricultural water conservation.*

18 (2) *Requiring the submission of water management plans to the*
19 *department, on and after 2011 and every five years thereafter, by*
20 *agricultural water districts using more than 3,000 acre-feet of*
21 *groundwater or surface water, and by counties that provide*
22 *regulatory oversight for individual agricultural groundwater users*
23 *that are not within established water districts.*

24 (3) *Requiring the state board to use its authority to determine*
25 *reasonable use of water over the coming decades to evolve away*
26 *from the generally accepted practices of diverting surface water*
27 *for irrigated agriculture, considering climatic and agronomic*
28 *factors in making these ongoing determinations.*

29 (e) *The achievement of increased water supply reliability*
30 *through the maintenance of diverse regional water supply*
31 *portfolios, and by establishing a statewide target to recycle 1.5*
32 *million acre-feet of water annually by 2020, encouraging local*
33 *water agencies to at least triple the current statewide capacity for*
34 *generating new water supplies through ocean and brackish water*
35 *desalination by 2020, requiring the state board to establish goals*
36 *by 2015 for infiltration and direct use of urban stormwater runoff*
37 *throughout the Delta watershed and its export areas, requiring*
38 *agencies to ensure that accurate and timely information is collected*
39 *and reported on all surface water and groundwater diversions in*
40 *California by 2012, requiring that all water purveyors develop an*

1 *integrated contingency plan by 2015 in the event of Delta water*
2 *supply curtailments or drought, and establishing a regulatory*
3 *framework that encourages efficient and integrated management*
4 *of water resources at local, regional, and statewide levels.*

5

6 *CHAPTER 4. DELTA ECOSYSTEM AND WATER COUNCIL*

7

8 *79860. (a) The Delta Ecosystem and Water Council is hereby*
9 *established to advance the coequal goals of restoring the Delta*
10 *ecosystem and creating a more reliable water supply in California.*

11 *(b) (1) The board of directors of the council shall consist of*
12 *seven members. The board members shall be appointed as follows:*

13

14 *(2) The initial term of office of each member of the board shall*
15 *be two, four, or six years, as specified in subdivision (c), and all*
16 *subsequent terms shall be eight years.*

17 *(3) No member of the board shall serve two consecutive terms,*
18 *but a member may be reappointed to the board after a period of*
19 *two years following the end of his or her term.*

20 *(4) Notwithstanding paragraph (3), those members of the board*
21 *that serve an initial term of two or four years may be immediately*
22 *appointed to a subsequent full eight-year term.*

23 *(c) At the first meeting of the board, the members shall classify*
24 *themselves by lot into three classes. One class shall have three*
25 *members and the other two classes shall have two members each.*
26 *For the class that has three members, the terms of office shall be*
27 *two years. The second class, composed of two members, shall serve*
28 *four years. The third class, composed of two members, shall serve*
29 *six years. Thereafter, the terms of all succeeding members shall*
30 *be eight years.*

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

35 *(e) The Governor shall appoint a chairperson from among the*
36 *board members, who shall serve for not more than four years.*

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

39 *(g) The Commissioner of the United States Bureau of*
40 *Reclamation, the Director of the United States Fish and Wildlife*

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1 *Service, the Director of the National Marine Fisheries Service,*
2 *and the Director of the United States Geological Service, if those*
3 *federal officials wish to participate, as well as the director of the*
4 *department and the Director of Fish and Game, shall be nonvoting*
5 *ex officio members of the board of directors.*

6 79861. *The chairperson shall serve full time. Other members*
7 *shall serve one-third time. The board of directors may select a*
8 *vice chairperson and other officers determined to be necessary.*

9 79862. (a) *Each member of the board shall receive the salary*
10 *provided for in Section 11564 of the Government Code.*

11 (b) *The members of the board of directors shall be reimbursed*
12 *for expenses necessarily incurred in the performance of official*
13 *duties.*

14 (c) *The board of directors shall appoint an executive director*
15 *who shall serve full time.*

16 (d) *The council shall hire employees necessary to carry out the*
17 *functions of the agency.*

18 (e) *The number of employees and qualifications of those*
19 *employees shall be determined by the council, subject to the*
20 *availability of funds.*

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

24 (g) *All persons employed by the council are state employees,*
25 *subject to the duties, responsibilities, limitations, and benefits of*
26 *the state.*

27 79863. *Board members shall be selected with diverse expertise*
28 *and perspectives, and include policy and resource experts, strategic*
29 *problem solvers, and individuals having success in resolving*
30 *multiinterest conflicts.*

31 79864. *The headquarters of the agency shall be located in*
32 *Sacramento.*

33

34 *CHAPTER 5. MISSION, DUTIES, AND RESPONSIBILITIES OF THE*
35 *DELTA ECOSYSTEM AND WATER COUNCIL*

36

37 79870. *The council shall do all of the following:*

38 (a) *Prepare and adopt a plan referred to as the California Delta*
39 *Ecosystem and Water Plan that incorporates the plans of other*

1 agencies, as appropriate, to carry out the requirements of this
2 division.

3 (b) The council shall have exclusive authority to determine the
4 consistency of any project proposed or approved by a state agency
5 or local government with the plan adopted pursuant to this division.

6 (c) Assume responsibility for any conservation or habitat
7 management plan developed for the Delta by the state or federal
8 government.

9 (d) Ensure that federal and state actions are consistent with the
10 plan.

11 (e) Participate as a trustee agency pursuant to Division 13
12 (commencing with Section 21000) of the Public Resources Code.

13 (f) Determine the consistency of major water, road, railroad,
14 utility, and levee infrastructure projects in the Delta with the plan
15 and communicate that determination to the responsible agencies.

16 (g) Assess policies applied outside the Delta that are critical to
17 meeting goals of this division and convey the results of that
18 assessment to the responsible agency.

19 (h) Work with the Delta Science and Engineering Board to adopt
20 sound principles of adaptive management.

21 (i) Receive and allocate funds to advance policies and programs
22 related to the Delta.

23 (j) Address environmental justice concerns with regard to the
24 implementation of the plan and regarding future Delta
25 decisionmaking.

26 (k) Empanel a public advisory group of stakeholders to advise
27 and make formal recommendations to the council, and to issue a
28 public biennial report on the activities of the council.

29 (l) Adopt procedures to facilitate use of alternative approaches
30 to dispute resolution, such as joint factfinding and arbitration to
31 reduce reliance on litigation and the courts.

32 (m) Exercise the power to sue to ensure compliance with the
33 plan.

34 (n) Establish policies and procedures that ensure that day-to-day
35 operations of water export systems are consistent with the plan.

36 79871. (a) The council shall prepare on or before August 1,
37 2010, a schedule for preparing and adopting the plan.

38 (b) The council shall prepare a list of all applicable legal
39 requirements, including requirements relating to federal and state

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1 *endangered species laws, that pertain to the Delta for*
2 *incorporation into the plan.*

3 *(c) The council shall commence the preparation of the plan on*
4 *or before September 2010, consistent with the procedural and*
5 *substantive requirements of the federal Coastal Zone Management*
6 *Act of 1972 (16 U.S.C. Sec. 1451 et seq.).*

7 *(d) The council shall appoint persons to serve on the Delta*
8 *Science and Engineering Board on or before September 1, 2010,*
9 *and direct the work of the Delta Science and Engineering Program.*

10 *(e) Coordinate with stakeholders as well as local, state, and*
11 *federal agencies.*

12 *(f) Seek the advice of the council's public advisory group to*
13 *enhance stakeholder participation and actively address*
14 *environmental justice concerns.*

15 *(g) Establish a goal for the adoption of the plan by December*
16 *1, 2010.*

17 *(h) If the plan is not adopted by December 1, 2010, the council*
18 *shall adopt an interim strategic plan.*

19 *(i) Identify and address, by December 1, 2010, any*
20 *inconsistencies between the state board's water quality control*
21 *plans and the plan or the interim strategic plan.*

22 *(j) Review, and if necessary amend, the plan at least every five*
23 *years.*

24

25 *CHAPTER 6. DELTA ECOSYSTEM AND WATER PLAN*

26

27 *79880. (a) The plan shall be prepared in order to achieve the*
28 *coequal goals of Delta Vision. The plan shall build upon other*
29 *plans, modifying and extending those plans as needed to meet the*
30 *requirements of this division. Those other plans include, but are*
31 *not limited to, the ecosystem restoration program being developed*
32 *by the Department of Fish and Game, the land use and resource*
33 *management plan developed by the Delta Protection Commission,*
34 *any local habitat conservation plan within the Delta, the Suisun*
35 *Marsh plan under development, the provisions of the California*
36 *Water Plan that address reliable water supply being developed by*
37 *the department, and the conservation program resulting from the*
38 *Bay Delta Conservation Plan.*

1 (b) Those persons responsible for implementing the plans
2 described in subdivision (a) shall do so in a manner that is
3 consistent with the plan adopted pursuant to this division.

4 79881. The plan shall meet all of the following requirements:

5 (a) Include any species protection requirements that impact
6 Delta resources.

7 (b) Include requirements for water flow and water quality in
8 the Delta that achieve the coequal goals.

9 (c) Identify state land use interests in the Delta, especially those
10 that impact the ecosystem, water supply reliability, and flood
11 concerns.

12 (d) Establish principles and procedures for adaptive
13 management.

14 (e) Establish requirements for the modeling, data collection,
15 management, monitoring, analysis, and interpretation to support
16 policy decisionmaking.

17 (f) Adopt a model designed to maximize flexibility and resiliency
18 in managing the Delta.

19 (g) Establish a detailed financing plan that identifies costs,
20 benefits, and revenue sources.

21 (h) Serve as a foundational document for a programmatic
22 environmental impact statement or environmental impact report
23 for projects in the Delta that require permits in accordance with
24 the National Environmental Policy Act (42 U.S.C. Sec. 4321 et
25 seq.) and the California Environmental Quality Act.

26 (i) Optimize the use of the CALFED Programmatic Record of
27 Decision dated August 28, 2000, and the Coastal Zone
28 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.) to maximize
29 participation of federal agencies in implementation of the plan.

30 79882. (a) The Legislature finds and declares that the
31 preparation of the plan should reflect all of the following principles
32 or goals:

33 (1) Recognize and enhance the unique cultural, recreational,
34 and agricultural values of the Delta as an evolving place.

35 (2) Restore the Delta ecosystem as the heart of a healthy estuary.

36 (3) The construction of facilities to improve the existing water
37 conveyance system, to expand statewide storage facilities, and to
38 operate both the water conveyance system and statewide storage
39 facilities to achieve the coequal goals.

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1 (4) *The reduction of risks to people, property, and state interests*
2 *in the Delta by means of effective emergency preparedness,*
3 *appropriate land uses, and strategic levee investments.*

4 (5) *The provision of adequate and reliable funding to carry out*
5 *this division.*

6 (b) *These principles and goals shall guide the financing*
7 *priorities of the council, the conservancy, the Delta Protection*
8 *Commission, and all related bodies, including the Delta Science*
9 *and Engineering Board.*

10 79883. *The council shall review and revise the plan every five*
11 *years. The review and revisions shall be based upon the adaptive*
12 *management program developed by the council and the Delta*
13 *Science and Engineering Board.*

14

15 *CHAPTER 7. DELTA ECOSYSTEM AND WATER FUND*

16

17 79885. (a) *The council may generate revenues and allocate*
18 *those revenues to pay for the work of the council, the conservancy,*
19 *the Delta Protection Commission, and related activities of the*
20 *Department of Fish and Game, the department, and the state board*
21 *in accordance with this division.*

22 (b) *The council may impose a per-acre-foot fee on water*
23 *diversions within the Delta watershed, and a fee on any water*
24 *conveyed through or around the Delta.*

25 (c) *In establishing fees under this chapter, the council shall be*
26 *subject to the following requirements:*

27 (1) *The amount of the fee shall not exceed the reasonable cost*
28 *of the program the fee supports.*

29 (2) *The fee shall not be imposed for adverse impacts that the*
30 *feepayer did not create or for benefits that the feepayer does not*
31 *obtain.*

32 (3) *The fee shall be equitably apportioned among feepayer*
33 *groups. Periodic adjustment mechanisms shall be established to*
34 *ensure that the fee is allocated fairly and that feepayers are not*
35 *paying disproportionately more than their impacts or benefits*
36 *justify.*

37 (d) *Moneys generated by the imposition of fees pursuant to*
38 *subdivision (b) shall be deposited in the Delta Ecosystem and*
39 *Water Fund, which is hereby established in the State Treasury.*

1 (e) The moneys in the fund, upon appropriation by the
2 Legislature to the council, shall be expended for the exclusive
3 purpose of implementing this division.

4 (f) The council shall establish requirements that apply to public
5 and private entities that seek funding pursuant to this section.
6 These requirements shall include, but shall not be limited to,
7 provisions relating to the minimum amount of costs required to
8 be borne by a local agency, and the development of a completed
9 financial plan prior to the receipt of funds for the design and
10 construction of major capital projects.

11 (g) No funding shall be available pursuant to this section unless
12 the private or public entity agrees to carry out its projects in a
13 manner that is consistent with the plan and this division.

14

15 *CHAPTER 8. THE CALIFORNIA DELTA CONSERVANCY*

16

17 79890. The California Delta Conservancy is hereby established
18 to implement the ecosystem restoration elements of the plan.

19 79891. (a) The conservancy shall consist of 11 voting members,
20 including both local and state officials serving staggered terms,
21 with voluntary federal participation in nonvoting roles.

22 (b) The Governor shall appoint the following members:

23 (1) Five members, each of whom shall represent one of the Delta
24 counties who shall be selected from nominees advanced by the
25 Delta Protection Commission.

26 (2) Two public members with business or land trust experience.

27 (c) The Secretary for Natural Resources and the Director of
28 Finance shall serve as voting *ex officio* members.

29 (d) Two additional public members, one appointed by the Senate
30 Committee on Rules and one by the Speaker of the Assembly, shall
31 serve as nonvoting *ex officio* members.

32 (e) The Governor shall appoint the chairperson of the
33 conservancy.

34 79892. The conservancy shall do all of the following:

35 (a) Coordinate state ecosystem-related and urban waterfront
36 projects in the Delta.

37 (b) Acquire or manage land as needed to implement the plan.

38 (c) Enter into contracts to buy and sell land and other property,
39 and acquire property through the State Public Works Board. The

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1 *conservancy shall be exempt from approval processes of the*
2 *Department of General Services.*

3 *(d) Assume responsibility for publicly or privately owned lands*
4 *pursuant to voluntary agreements.*

5 *(e) Receive funding from the state, the council, or any other*
6 *source, and allocate those funds for purposes consistent with*
7 *policies and plans adopted by the council.*

8 *(f) Support appropriate recreation and ecosystem activities in*
9 *the Delta, including bolstering the local economy and National*
10 *Heritage Area designations consistent with the plan.*

11 *(g) Establish incentives for mutually beneficial mixtures of*
12 *traditional agriculture, habitat, and recreation, including*
13 *agri-tourism, wildlife-friendly agriculture practices, birdwatching,*
14 *and hunting.*

15

16 *CHAPTER 9. THE DELTA PROTECTION COMMISSION*

17

18 79895. *(a) To ensure state interests in the region are fully*
19 *protected over decades, all general plans of Delta counties and*
20 *cities within Delta counties shall be consistent with the plan.*

21 *(b) The Delta Protection Commission shall revise its resource*
22 *management plan to be consistent with the plan.*

23 *(c) The Delta Protection Commission shall review and certify*
24 *all general plans of Delta counties and cities within Delta counties*
25 *for consistency with its resource management plan and the plan.*

26 *(d) The Delta Protection Commission shall determine whether*
27 *any project approved by local governments within the primary*
28 *zone is consistent with the resource management plan and the*
29 *plan.*

30 *(e) It is the intent of the Legislature that the Delta Protection*
31 *Commission shall exercise appeal authority over selected portions*
32 *of the secondary zone once local plans are created for those areas.*
33 *Until those local plans are created, it is the intent of the Legislature*
34 *that the commission shall possess direct consistency determination*
35 *authority over development proposals in those areas.*

36 *(f) General plans of Delta counties and cities within those*
37 *counties shall be revised and submitted for consistency review to*
38 *the Delta Protection Commission upon completion. The council*
39 *may review local plans, or exercise consistency determination*

1 *authority for individual projects in the primary or secondary zones,*
2 *at its discretion.*

3

4 *CHAPTER 10. THE DELTA SCIENCE AND ENGINEERING BOARD*
5 *AND THE DELTA SCIENCE AND ENGINEERING PROGRAM*

6

7 *79900. The Legislature finds and declares all of the following:*

8 *(a) California should maintain a strong and consistent*
9 *investment in science and engineering important to the Delta.*
10 *There needs to be a more direct link between scientific investigation*
11 *and real-world management and policy.*

12 *(b) To achieve this, the council requires both a permanent*
13 *science and engineering program staff and an independent science*
14 *and engineering board that reviews actions undertaken by the*
15 *council.*

16 *(c) The program and the board should receive stable, adequate*
17 *funding.*

18 *(d) The science and engineering program should be a*
19 *replacement for, and a successor to, the successful CALFED*
20 *Independent Science Program, and a newly constituted delta*
21 *science and engineering board should replace the CALFED*
22 *Independent Science Board.*

23 *79901. The Delta Science and Engineering Board is hereby*
24 *established, consisting of between 12 and 20 individuals with*
25 *natural science, social science, engineering, and policy expertise*
26 *appointed by the council to a maximum of two five-year terms.*
27 *Lead scientists appointed by the council shall have a rotating*
28 *appointment of three years. To ensure independence, the current*
29 *practice in which lead scientists are formally engaged by an agency*
30 *other than the state, such as the United States Geological Survey,*
31 *should continue. The Delta Science and Engineering Board shall*
32 *respond to requests from the council or independently offer advice*
33 *on significant issues of its choosing.*

34 *79902. The council shall appoint persons to serve on the Delta*
35 *Science and Engineering Board. The Delta Science and*
36 *Engineering Board shall carry out a Delta science and engineering*
37 *program referred to as the Delta Science and Engineering Program*
38 *under the direction of the council. That program shall undertake*
39 *all of the following activities:*

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- 1 (a) *Research critical scientific issues of both the physical Delta*
- 2 *and elsewhere in the state relevant to Delta management.*
- 3 (b) *Organize, assess, and synthesize the best available science*
- 4 *for policymakers and the council.*
- 5 (c) *Review all major projects undertaken to advance the goals*
- 6 *of Delta Vision.*
- 7 (d) *Conduct independent science and engineering reviews of*
- 8 *the work of government agencies or consultant work upon the*
- 9 *request of the council, the conservancy, or other state agencies.*
- 10 (e) *Establish communication channels to effectively transmit*
- 11 *science and engineering results to broader and more diverse*
- 12 *audiences, coordinating with the council’s Public Advisory Group.*
- 13 (f) *Prepare discussion papers and interactive lectures.*
- 14 SEC. 4. *If the Commission on State Mandates determines that*
- 15 *this act contains costs mandated by the state, reimbursement to*
- 16 *local agencies and school districts for those costs shall be made*
- 17 *pursuant to Part 7 (commencing with Section 17500) of Division*
- 18 *4 of Title 2 of the Government Code.*

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24

<p>All matter omitted in this version of the bill appears in the bill as introduced in the Senate, December 1, 2008 (JR11)</p>

SENATE BILL**No. 229**

Introduced by Senator PavleyFebruary 23, 2009

An act to add Division 28 (commencing with Section 80500) to, and to repeal and add Article 2 (commencing with Section 150) of Chapter 2 of Division 1 of, the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

SB 229, as introduced, Pavley. California Water Commission: Bay-Delta.

(1) Existing law establishes the 9-member California Water Commission in the Department of Water Resources and requires the commission to conduct an annual review of the progress and operation of the State Water Project and to carry out various other related functions.

This bill would substantially revise the membership and functions of the commission. The bill would establish the commission in the Natural Resources Agency and require that it be considered an independent commission. The commission would consist of 5 members appointed by the Governor and subject to the confirmation of the Senate. The commission would have primary authority to implement and oversee the implementation of the Bay-Delta Interim Governance Act of 2009, as described in (2). The bill would authorize the commission to serve as lead agency to implement specified projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan.

(2) Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The California Bay-Delta Authority Act establishes in the Natural Resources Agency the California Bay-Delta Authority. The act requires

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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 enact the Bay-Delta Interim Governance Act of 2009 to provide for interim management and governance measures for the Bay-Delta, as defined, and to enhance the reliability of water supplies that originate in the Bay-Delta. The act would require the agency to adopt a Bay-Delta Conservation Plan for the Bay-Delta. The development and implementation of the plan would be funded through a fee established by the commission and paid by all entities that are beneficiaries, as defined, of the plan and those entities that divert water from a Delta water body. The act would require the State Board of Equalization to collect the fee and deposit the moneys collected in the Delta Governance Account, which the bill would establish. Moneys in the account would be available, upon appropriation by the Legislature, only for expenditure on projects or programs contained in the plan.

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

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

1 SECTION 1. Article 2 (commencing with Section 150) of
2 Chapter 2 of Division 1 of the Water Code is repealed.

3 SEC. 2. Article 2 (commencing with Section 150) is added to
4 Chapter 2 of Division 1 of the Water Code, to read:

5

6 Article 2. California Water Commission

7

8 150. There is in the Natural Resources Agency the California
9 Water Commission, is an independent commission. In addition to
10 its duties and responsibilities contained herein the commission
11 shall focus on interim measures in the Bay-Delta as described in
12 this article.

13 151. The California Water Commission consists of five
14 members appointed by the Governor and subject to the
15 confirmation of the Senate, as provided in this article.

1 152. The Governor shall select and approve members for
2 appointment on the basis of their general educational and business
3 qualifications, and their knowledge of, interest in, and experience
4 with problems relating to the control, storage, and beneficial use
5 of water. The membership shall represent all parts of the state so
6 far as it is practicable.

7 153. The Governor shall appoint the initial five members of
8 the California Water Commission before January 15, 2010. The
9 members shall serve staggered terms. The terms of the members
10 of the California Water Commission shall expire as follows: one
11 member on January 15, 2011, two members on January 15, 2012,
12 and two members on January 15, 2013. The members of the
13 commission shall allocate the initial terms among themselves by
14 lot or other method.

15 154. Appointments shall be for terms of four years. Vacancies
16 shall be immediately filled by the Governor for the unexpired
17 portion of the terms in which they occur.

18 155. The appointments made by the Governor to membership
19 on the California Water Commission are subject to confirmation
20 by the Senate at the next regular or special session of the
21 Legislature and the refusal or failure of the Senate to confirm an
22 appointment shall create a vacancy in the office to which the
23 appointment was made.

24 156. The members of the California Water Commission may
25 be removed from office by the Legislature, by concurrent resolution
26 adopted by a majority vote of all members elected to each house,
27 for dereliction of duty, corruption, or incompetency.

28 157. Each member of the California Water Commission shall
29 receive one hundred dollars (\$100) for each day during which the
30 member is engaged in the performance of official duties, but shall
31 not be compensated for more than 40 days in any one fiscal year,
32 except that the chairperson of the commission may be compensated
33 for up to 60 days for performance of those duties. In addition to
34 that compensation, each member shall be reimbursed for necessary
35 traveling and other expenses incurred in the performance of official
36 duties.

37 158. The California Water Commission shall maintain its
38 headquarters in Sacramento and shall hold meetings at such times
39 and at such places as shall be determined by it. All meetings of
40 the commission shall be open and public.

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1 159. Special meetings may be called at any time by the chair
2 of the commission or by the executive officer at the request of any
3 four members, upon notice specifying the matters to be acted upon
4 at that meeting, but no other matters shall be acted upon at special
5 meetings that were not so noticed, unless all members are present
6 and consent thereto.

7 160. The members of the California Water Commission shall
8 select one of the members to serve as chair, who shall hold office
9 as chair at the pleasure of the commission.

10 161. The California Water Commission shall confer with,
11 advise, and make recommendations to the director with respect to
12 any matters and subjects under the jurisdiction of the director. All
13 rules and regulations of the department, other than those relating
14 exclusively to the internal administration and management of the
15 department, shall be first presented by the director to the
16 commission and shall become effective only upon approval by the
17 commission.

18 162. The California Water Commission shall have the power
19 to name all facilities of the State Water Resources Development
20 System owned by the state. The commission may receive testimony
21 from the public on matters involving its responsibilities under this
22 section, and, after public hearing for the purpose of considering
23 all proposed names for those facilities, may, by resolution, express
24 its decision regarding the naming of specific facilities of the State
25 Water Resources Development System.

26 163. (a) The commission shall have primary authority to
27 implement and oversee the implementation of the Bay-Delta
28 Interim Governance Act of 2009 (Division 28 (commencing with
29 Section 80500), including, but not limited to, the responsibility to
30 ensure that the coequal goals for the governance of the Delta
31 identified in that division are successfully coordinated and
32 implemented, the implementation of the Bay-Delta Conservation
33 Plan adopted pursuant to that act, and the responsibility to
34 recommend priority activities and projects to the Natural Resources
35 Agency, the state board, and other entities for environmental review
36 and implementation that are included within the Bay-Delta
37 Conservation Plan.

38 (b) The commission may serve as lead agency to implement
39 specified projects recommended by the final environmental impact
40 report of the Bay-Delta Conservation Plan. The commission may

1 enter into agreements with appropriate state agencies to provide
2 technical assistance that may be necessary to implement specific
3 projects.

4 (c) Establish a Delta fee in accordance with Section 80535.

5 (d) The commission shall recommend at least one individual to
6 serve as a watermaster who shall be charged with the responsibility
7 of enforcing all statutory provisions that are relevant to the
8 successful implementation of the Bay-Delta Conservation Plan.
9 The costs of the watermaster shall be paid from the Delta
10 Governance Account established pursuant to Section 80535.

11 (e) Watermaster decisions may be appealed by an affected party
12 to the chair of the state board. The chair may stay decisions if he
13 or she determines that the decision of the watermaster was not
14 supported by substantial evidence in the record. An order of the
15 chair of the state board pursuant to this subdivision that stays an
16 order of the watermaster shall be set for hearing before the full
17 state board at the earliest possible meeting.

18 164. The commission may employ an executive officer, exempt
19 from civil service, under subdivision (e) of Section 4 of Article
20 XXIV of the Constitution, and other staff it determines to be
21 necessary for the proper discharge of its duties and may purchase
22 or rent necessary supplies, instruments, tools, equipment, and
23 conveniences.

24 165. The department shall furnish to the California Water
25 Commission, at its request, assistance, including technical, legal,
26 and clerical services, as is required to the extent funds are made
27 available therefor.

28 166. (a) The commission may hold any hearings and conduct
29 any investigations in any part of the state necessary to carry out
30 the powers vested in it, and for those purposes has the powers
31 conferred upon heads of departments of the state by Article 2
32 (commencing with Section 11180) of Chapter 2 of Part 1 of
33 Division 3 of Title 2 of the Government Code.

34 (b) Any hearing or investigation by the commission may be
35 conducted by any member or nominee upon authorization of the
36 commission, and he or she shall have the powers granted to the
37 commission by this section, but any final action of the commission
38 shall be taken by a majority of the members of the commission at
39 a meeting duly called and held.

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1 167. The California Water Commission shall conduct an annual
2 review of the progress of construction and operation of the State
3 Water Resources Development System, and shall make a report
4 on its findings to the department and to the Legislature, together
5 with whatever recommendations it deems appropriate.

6 168. The California Water Commission shall hold public
7 hearings on all additional facilities proposed to be added to the
8 State Water Resources Development System by the department
9 pursuant to the authority granted by Sections 12931 and 12938.

10 SEC. 3. Division 28 (commencing with Section 80500) is added
11 to the Water Code, to read:

12
13 DIVISION 28. BAY-DELTA INTERIM GOVERNANCE

14
15 CHAPTER 1. GENERAL PROVISIONS

16
17 80500. This division shall be known and may be cited as the
18 Bay-Delta Interim Governance Act of 2009.

19 80501. (a) It is the intent of the Legislature to provide for
20 interim management and governance measures that will contribute
21 to the health of the Bay-Delta and to enhance water supply
22 reliability to those who depend on adequate water supplies that
23 originate in the Bay-Delta.

24 (b) It is further the intent of the Legislature to accomplish the
25 identified tasks through the use of existing government agencies
26 and not to create additional entities.

27 (c) It is further the intent of the Legislature that federal, state,
28 and local governments should cooperate in devising the necessary
29 projects, programs, water supply reliability improvements, and
30 ecosystem recovery strategies in the Delta.

31
32 CHAPTER 2. DEFINITIONS

33
34 80510. Unless the context otherwise requires, the definitions
35 set forth in this chapter govern the construction of this division.

36 80511. "Account" means the Delta Governance Account
37 established in Section 80535.

38 80512. "Agency" means the Natural Resources Agency.

39 80513. "Commission" means the California Water Commission.

1 80514. "Delta" means the Sacramento-San Joaquin Delta
2 estuary, as defined in Section 12220 and Suisun Bay.

3 80515. "Plan" means the Bay-Delta Conservation Plan adopted
4 pursuant to Chapter 3 (commencing with Section 80530).

5

6

CHAPTER 3. BAY-DELTA OPERATION

7

8 80530. (a) It is the policy of the state that, to the maximum
9 extent practicable, projects and programs of state agencies that
10 affect the Bay-Delta shall achieve the two coequal goals of
11 ecosystem recovery and improvements to the reliability of public
12 water supplies.

13 (b) The agency, in consultation with the state board, shall
14 undertake all necessary actions to ensure that all funds and
15 programs of the State of California and its cooperating partners in
16 the federal government and local governments in the Bay-Delta
17 are consistent with the goals established in subdivision (a).

18 80531. (a) The agency shall adopt a Bay-Delta Conservation
19 Plan for the Bay-Delta. The plan shall incorporate adaptive
20 management techniques to the maximum extent practicable in
21 order to focus the best available scientific information on the two
22 coequal goals established in subdivision (a) of Section 80530.

23 (b) The agency shall act as the lead agency in the development
24 of the plan. The plan shall be consistent with the Natural
25 Community Conservation Planning Act (Chapter 10 (commencing
26 with Section 2800) of Division 10 of the Fish and Game Code.)
27 The Secretary for Natural Resources shall extend an invitation to
28 appropriate federal agencies and local governments inviting their
29 participation and entering into agreements consistent with this
30 section at the earliest possible time.

31 80532. The Secretary for Natural Resources shall extend an
32 invitation to cooperating federal agencies and local governments
33 to participate in the interim governance of the Bay-Delta pursuant
34 to this division.

35 80533. The plan and its component projects shall fully comply
36 with the California Environmental Quality Act (Division 13
37 (commencing with Section 21000) of the Public Resources Code).
38 It is the intent of the Legislature that the agency shall, to the extent
39 feasible, coordinate with local governments that are developing
40 natural community conservation plans adjacent to the Delta.

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1 80534. The Legislature finds and declares that, in addition to
2 the development and implementation of the plan, other interim
3 measures not included in the plan should be addressed in the short
4 term, including, but not limited to, issues pertaining to
5 transportation, utilities, recreation, water supply, flood control,
6 and others. The parties identified in Section 12805.4 of the
7 Government Code shall develop an interim plan that includes
8 recommendations for projects and programs to address these issues
9 that can be implemented as interim measures.

10 80535. (a) The development and implementation of the plan
11 shall be funded through a fee paid by all entities that are
12 beneficiaries of the plan and those entities that divert water from
13 a Delta water body. For purposes of this section, plan
14 “beneficiaries” are those entities that obtain or are delegated
15 authority, pursuant to the plan or its implementing agreements, to
16 take endangered, threatened, or candidate species protected under
17 state or federal law.

18 (b) The commission shall establish the fee, in consultation with
19 the agency and the state board, sufficient to fund the development
20 and implementation of the plan. The fee may be graduated to reflect
21 factors recognized by the commission that may include, but are
22 not limited to, the volume of water diverted, the nature and type
23 of the diversion, and other factors as determined by the
24 commission. The State Board of Equalization shall collect the fee
25 and deposit the moneys collected in the Delta Governance Account,
26 which is hereby established within the State Treasury. The moneys
27 in the account shall be available, upon appropriation by the
28 Legislature, only for expenditure on projects or programs contained
29 in the plan.

30 80536. Plan projects may be funded, if authorized, by moneys
31 made available by bond acts approved before January 1, 2010,
32 upon appropriation by the Legislature for that purpose. It is the
33 intent of the Legislature that plan projects may also be funded from
34 other general obligation bonds approved by a vote of the people
35 and revenue bonds.

O

SENATE BILL**No. 457**

Introduced by Senator WolkFebruary 26, 2009

An act to add Sections 29735.5 and 29759 to, and to add Division 17.5 (commencing with Section 27000) to, the Public Resources Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as introduced, Wolk. Sacramento-San Joaquin Delta.

Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the 23-member 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. That act establishes a primary zone where further development is barred and a secondary zone surrounding the Delta where development may proceed under certain conditions.

The California Bay-Delta Authority Act establishes in the Natural Resources Agency the California Bay-Delta Authority. 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 create a 7-member Delta Stewardship Council in the Natural Resources Agency with specified powers and responsibilities relating to the Delta, including approving the Delta Stewardship Plan to guide and shape management of the Delta. The bill would require

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the commission to present the council with a draft plan on or before October 1, 2010. The bill would require the council to adopt the plan on or before January 1, 2011. The bill would require the council to review, and if necessary, amend the plan at least every 5 years.

The bill would establish the Sacramento-San Joaquin Delta Conservancy to undertake various activities related to the Delta and would prescribe the management, powers, and duties of the conservancy. The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.

The bill would require the council by March 1, 2010, to appoint a Delta Science and Engineering Board and create a Delta Science and Engineering Program. The bill would state the intent of the Legislature that the Delta Science and Engineering Program be a replacement for, and a successor to, the CALFED Science Program, with specified responsibilities, and that the Delta Science and Engineering Board be a replacement for the CALFED Independent Science Board.

The bill would require the commission to require all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with the Delta Stewardship Plan, thereby imposing a state-mandated local program on cities and counties. The bill would require the commission to revise all of its plans and policies to be consistent with the Delta Stewardship Plan, to review and certify all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan, to exercise direct consistency determination authority over development proposals in the primary zone, to review, hold public hearings and receive testimony, and provide recommendations to the council on all proposed projects subject to approval by the council, and develop a regional economic development plan.

The bill would create the Delta Stewardship Fund and would require the commission to deposit in the fund any moneys received from federal, state, local, and private sources for Delta stewardship. Moneys in the fund would be available, upon appropriation, for regional economic development consistent with the Delta Stewardship Plan.

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.

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

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

1 SECTION 1. Division 17.5 (commencing with Section 27000)
2 is added to the Public Resources Code, to read:

3

4 DIVISION 17.5. DELTA GOVERNANCE

5

6 CHAPTER 1. GENERAL PROVISIONS

7

8 27000. The Legislature finds and declares that the
9 Sacramento-San Joaquin Delta is a natural resource of statewide,
10 national, and international significance, containing irreplaceable
11 resources, and it is the policy of the state to recognize, preserve,
12 and protect those resources of the Delta for the use and enjoyment
13 of current and future generations. In implementing that policy, the
14 state shall act pursuant to all of the following principles:

15 (a) A revitalized Delta ecosystem and a reliable water supply
16 for California are the primary, coequal goals for sustainable
17 management of the Delta.

18 (b) The Delta is a unique and valued area, warranting recognition
19 and special legal status from the state.

20 (c) The Delta ecosystem must function as an integral part of a
21 healthy estuary.

22 (d) California's water supply is limited and must be managed
23 with significantly higher efficiency to be adequate for the state's
24 future population, growing economy, and vital environment.

25 (e) The foundation for policymaking regarding California water
26 resources must be the longstanding principles of "reasonable use"
27 and "public trust"; these principles are particularly important and
28 applicable to the Delta. The goals of conservation, efficiency, and
29 sustainable use must drive state water policies.

30 (f) A revitalized Delta ecosystem will require reduced diversions
31 of water, or changes in patterns and timing of those diversions
32 upstream of the Delta, within the Delta, and exported from the
33 Delta, at critical times.

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1 (g) New facilities for conveyance and storage, and better linkage
2 between the two, are needed to better manage California's water
3 resources for both the health of the estuary and the quality and
4 reliability of exported water.

5 (h) Major investments in the Delta and the statewide water
6 management system must integrate and be consistent with specific
7 policies in the Delta Vision. In particular, these strategic
8 investments must strengthen selected levees, improve floodplain
9 management, and improve water circulation and quality.

10 (i) The current boundaries and governance system of the Delta
11 must be changed. It is essential to have an independent body with
12 authority to achieve the coequal goals of ecosystem revitalization
13 and adequate water supply for California, while also recognizing
14 the importance of the Delta as a unique and valued area. This body
15 must have secure funding and the ability to approve spending,
16 planning, and water export levels.

17 (j) Discouraging inappropriate urbanization of the Delta is
18 critical both to preserve the Delta's unique character and to ensure
19 adequate public safety.

20 (k) Institutions and policies for the Delta should be designed
21 for resiliency and adaptation.

22 27001. The Legislature finds and declares that the Delta is in
23 crisis and existing Delta policies are not sustainable in the long
24 term, particularly in light of the threat of climate change and sea
25 level rise to state water supplies and water availability. Protecting
26 the public trust and improving the stewardship of the precious
27 resources of the Delta require fundamental reorganization of the
28 state's management of those resources.

29 27002. The Legislature finds and declares all of the following:

30 (a) Before California's statehood, the Delta had developed over
31 millions of years of sedimentary deposits from California's two
32 great rivers. When European settlers arrived, the Delta was a
33 shallow wetland with water covering the area for many months of
34 the year. Natural levees, created by deposits of sediment, allowed
35 some islands to emerge during the dry summer months. As with
36 other river estuaries, salinity would fluctuate, depending on the
37 season and the amount of precipitation in any one year.

38 (b) Not long after statehood, settlers began building larger levees
39 to keep water off certain islands for the entire year. In this way,
40 they gained a property interest in the created island. Into the 20th

1 century, numerous islands and a maze of Delta channels emerged,
2 along with a robust agricultural economy relying on the fertile peat
3 soils that had been deposited over millions of years. Cultivation
4 of these peat soils, however, caused oxidation and subsidence,
5 leading to some areas of the Delta lying as deep as 30 feet below
6 the adjacent water level.

7 (c) In 1933, the Legislature adopted the California Water Plan,
8 which envisioned a set of northern California reservoirs to hold
9 water in the Sacramento River watershed for subsequent transfer
10 across the Delta into the San Joaquin Valley. The 1933 plan also
11 envisioned a reservoir on the main stem of the San Joaquin River,
12 which would hold back water that otherwise flowed to the Delta
13 and transfer that water south into the Tulare Lake and Kern River
14 basins. Because California did not have the resources to finance
15 the plan at that time, the federal government agreed to implement
16 the plan through the United States Bureau of Reclamation, which
17 constructed the Central Valley Project.

18 (d) In 1959, the Legislature approved construction of a State
19 Water Project, again drawing water from a northern California
20 reservoir across the Delta to serve agricultural uses in the Tulare
21 Lake and Kern River basins as well as urban uses in southern
22 California and the San Francisco Bay area. In 1960, California
23 voters approved the issuance of one billion seven hundred fifty
24 million dollars (\$1,750,000,000) in bonds to pay for the State
25 Water Project, which began exporting water from the Delta in
26 1968.

27 27003. The Legislature finds and declares all of the following:

28 (a) As demands on the Delta's resources have expanded, the
29 Delta has suffered conflict and deterioration. As water quality and
30 the fishery have declined, litigation over water quality standards
31 and fishery protection has raged for several decades, ultimately
32 leading to a 1994 agreement between the state and the federal
33 government on Delta water quality standards. Thereafter, the two
34 governments developed the CALFED Bay-Delta Program to
35 improve conditions for four critical issues: water supply, ecosystem
36 restoration, water quality, and levee system integrity. The two
37 governments signed a Record of Decision to establish a 30-year
38 Delta improvement program on August 28, 2000.

39 (b) Since the 2000 CALFED Record of Decision, water project
40 pumping has increased to record high levels and certain fish

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1 populations have declined to record low levels, with the Delta
2 smelt approaching extinction. Studies of the Delta's ecosystem
3 crisis have indicated that the recent decline has been caused by
4 three categories of problems for the Delta: water project operations,
5 toxic contaminants, and invasive species. All three of these
6 categories of problems have worsened in recent years, arising out
7 of the growth and development of the Central Valley economy.

8 (c) Recent years also have demonstrated the fragility of the
9 Delta levee system. After a 2004 levee failure on a clear summer
10 day, not during a flood event, the state has focused increased
11 attention on the conditions of the Delta's levees, which are mostly
12 owned by private parties or local reclamation districts. Continued
13 farming on peat soils has led to greater subsidence to levels far
14 below adjacent water levels in some parts of the Delta. These
15 conditions put greater hydraulic pressure on Delta levees and
16 increase the risk of levee failure. The Department of Water
17 Resources has identified a possible risk scenario where an
18 earthquake could lead to mass levee failure and the creation of a
19 deep, saline water body where deeply subsided islands formerly
20 stood. This type of mass levee failure would interrupt water exports
21 from the Delta, as saline water approached the water project
22 pumping facilities in the south Delta.

23 (d) Finally, increasing urbanization on the fringes of the Delta
24 has led to greater stress on the Delta's resources. In 1992, the
25 Legislature passed the Delta Protection Act of 1992 (Division 19.5
26 (commencing with Section 29700)), which established a primary
27 zone where further development is barred and a secondary zone
28 surrounding the Delta where development may proceed under
29 certain conditions. The Delta Protection Commission, created by
30 the Delta Protection Act of 1992, has succeeded in large part due
31 to the leadership of local officials who represent those who live
32 and work in the Delta.

33

34 CHAPTER 2. DEFINITIONS

35

36 27050. Unless the context otherwise requires, the definitions
37 set forth in this chapter govern the construction of this division.

38 27052. "Commission" means the Delta Protection Commission
39 established in the Delta Protection Act of 1992 (Division 19.5
40 (commencing with Section 29700)).

1 27054. "Conservancy" means the Sacramento-San Joaquin
2 Delta Conservancy established in Chapter 4 (commencing with
3 Section 27200).

4 27056. "Council" means the Delta Stewardship Council
5 established in Chapter 3 (commencing with Section 27100).

6 27058. "Delta" means the Sacramento-San Joaquin Delta
7 estuary, as defined in Section 12220 of the Water Code.

8 27060. "Delta Vision" means the report titled "Delta Vision:
9 Our Vision for the California Delta" as adopted by the Blue Ribbon
10 Task Force on November 30, 2007.

11 27062. "Plan" means the Delta Stewardship Plan adopted
12 pursuant to Chapter 6 (commencing with Section 27400).

13 27064. "State Water Project" means the State Water Resources
14 Development System.

15

16 CHAPTER 3. DELTA STEWARDSHIP COUNCIL

17

18 27100. (a) There is hereby created the Delta Stewardship
19 Council in the Natural Resources Agency, consisting of seven
20 members appointed by the Governor and subject to Senate
21 confirmation, that shall have the responsibility for the stewardship
22 of the Sacramento-San Joaquin Delta and all its natural resources.
23 It is the intent of the Legislature that the membership include
24 diverse expertise and perspectives, policy and resource experts,
25 strategic problem solvers, and individuals having successfully
26 resolved multi-interest conflicts.

27 (b) The council shall do all of the following:

28 (1) Approve the Delta Stewardship Plan.

29 (2) Determine whether a project proposed by or approved by a
30 state agency or local government that may impact the Delta is
31 consistent with the plan.

32 (3) Assume responsibility for any conservation or habitat
33 management plan developed for the Delta by the state or federal
34 government.

35 (4) Ensure federal and state consistency with the plan.

36 (5) Be designated a trustee agency pursuant to the California
37 Environmental Quality Act (Division 13 (commencing with Section
38 21000)).

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- 1 (6) Determine the consistency of major water, road, railroad,
2 utility, and levee infrastructure projects in the Delta with the plan
3 and communicate that determination to the responsible agencies.
4 (7) Assess policies applied outside the Delta that are critical to
5 meeting Delta Vision goals and convey the results of that
6 assessment to the responsible agency.
7 (8) Work with the Delta Science and Engineering Program and
8 the Delta Science and Engineering Board on adopting sound
9 principles of adaptive management.
10 (9) Receive and allocate funds to advance policies and programs
11 related to the Delta.
12 (10) Include issues of environmental justice in the plan and in
13 future Delta decisionmaking.
14 (11) Adopt procedures for use of alternative approaches to
15 dispute resolution, such as joint fact finding and arbitration to
16 reduce reliance on litigation and the courts.
17 (12) Have the power to sue to ensure compliance with the plan.
18 (13) Establish policies and procedures that ensure that
19 day-to-day operation of water export systems is consistent with
20 the plan.
21 27101. Each member shall serve for five years. The length of
22 the initial terms of office shall be staggered.

23
24 CHAPTER 4. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

25
26 Article 1. General Provisions and Definitions

- 27
28 27200. For the purposes of this chapter, the following terms
29 have the following meanings:
30 (a) "Board" means the governing board of the Sacramento-San
31 Joaquin Delta Conservancy.
32 (b) "Fund" means the Sacramento-San Joaquin Delta
33 Conservancy Fund created pursuant to Section 27223.
34 (c) "Local public agency" means a city, county, district, or joint
35 powers authority.
36 (d) "Nonprofit organization" means a private, nonprofit
37 organization that qualifies for exempt status under Section
38 501(c)(3) of Title 26 of the United States Code, and that has among
39 its principal charitable purposes preservation of land for scientific,
40 recreational, scenic, or open-space opportunities; protection of the

1 natural environment, or preservation or enhancement of wildlife;
2 preservation of cultural and historical resources; or, efforts to
3 provide for the enjoyment of public lands.

4 (e) "Tribal organization" means an Indian tribe, band, nation,
5 or other organized group or community, or a tribal agency
6 authorized by a tribe, which is recognized as eligible for special
7 programs and services provided by the United States to Indians
8 because of their status as Indians and is identified on pages 52829
9 to 52835, inclusive, of Number 250 of Volume 53 (December 29,
10 1988) of the Federal Register, as that list may be updated or
11 amended from time to time.

12

13 Article 2. Sacramento-San Joaquin Delta Conservancy

14

15 27210. There is in the Natural Resources Agency the
16 Sacramento-San Joaquin Delta Conservancy, which is created as
17 a state agency to do all of the following, working in collaboration
18 and cooperation with local governments and interested parties:

19 (a) Monitor projects within the watershed of the Delta that
20 provide substantial benefits to the ecosystem or recreation capacity
21 of the Delta.

22 (b) Provide stewardship of the Delta by establishing and meeting
23 natural resource goals through both terrestrial and aquatic
24 ecosystem protection and restoration efforts.

25 (c) Coordinate with other Delta governance entities.

26 27212. The board shall consist of nine voting members and
27 seven nonvoting members, appointed or designated as follows:

28 (a) The nine voting members of the board shall consist of all of
29 the following:

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

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

33 (3) The chairperson of the Delta Protection Commission, or his
34 or her designee.

35 (4) Two public members appointed by the Governor.

36 (5) Two public members appointed by the Senate Committee
37 on Rules.

38 (6) Two public members appointed by the Speaker of the
39 Assembly.

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1 (7) One public member appointed by the Governor, one public
2 member appointed by the Senate Committee on Rules, and one
3 public member appointed by the Speaker of the Assembly shall
4 be locally elected officials from within the five Delta-region
5 counties. The three other public members shall represent statewide
6 interests, with one member residing in the Delta and one member
7 residing in southern California, and each shall have expertise in
8 natural sciences, water and flood management, or conservation
9 sufficient to contribute to the goals of the conservancy.

10 (b) The seven nonvoting members shall consist of the following:

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

13 (2) Three Members of the Senate, appointed by the Senate
14 Committee on Rules, and three Members of the Assembly,
15 appointed by the Speaker of the Assembly, shall meet with the
16 conservancy and participate in its activities to the extent that this
17 participation is not incompatible with their positions as Members
18 of the Legislature. At least two of the Members of the Senate and
19 two Members of the Assembly shall represent a district that
20 encompasses a portion of the Delta.

21 27213. The members appointed by the Governor shall serve
22 at his or her pleasure. The locally elected public members shall
23 serve for a term of four years, with a two-term limit. The state
24 interest public members shall serve for a term of four years, with
25 a two-term limit.

26 27214. The Secretary of the Natural Resources Agency shall
27 select one of the public members to serve as chairperson of the
28 board. A majority of the membership of the board constitutes a
29 quorum.

30 27215. The board shall appoint an executive officer of the
31 conservancy.

32

33 Article 3. Powers, Duties, and Limitations

34

35 27220. The conservancy's jurisdiction is limited to the Delta.

36 27221. The conservancy may do all of the following:

37 (a) Fund or undertake pilot projects based on the research of
38 Delta science and engineering advisory groups.

1 (b) Develop, plan, and conduct environmental reviews, and
2 implement, monitor, and manage projects, or provide grants or
3 loans to others for these activities.

4 (c) Acquire water or water rights.

5 27222. (a) The conservancy may pursue and accept funds from
6 various sources, including, but not limited to, federal, state, and
7 local funds or grants, private philanthropy, gifts, donations,
8 bequests, devises, subventions, grants, rents, royalties, or other
9 assistance and funds from public and private sources.

10 (b) The conservancy may accept fees levied by others, which
11 shall not be subject to appropriation.

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

13 (d) All funds received by the conservancy shall be deposited in
14 the fund for expenditure for the purposes of this chapter.

15 27223. The Sacramento-San Joaquin Delta Conservancy Fund
16 is hereby created in the State Treasury. Moneys in the fund shall
17 be available, upon appropriation by the Legislature, only for the
18 purposes of this division.

19 27224. (a) The conservancy may create or participate in a joint
20 powers authority or a supporting nonprofit organization to further
21 the goals of the conservancy, including long-term land management
22 and stewardship, interagency relations, and revenue generation.

23 (b) The conservancy may establish a supporting nonprofit
24 organization to assist with conservancy operations.

25 (c) The conservancy may engage in partnerships with nonprofit
26 organizations, local public agencies, and landowners.

27 (d) The conservancy may provide grants and loans to state
28 agencies, local public agencies, nonprofit organizations, and tribal
29 organizations to further the goals of the conservancy.

30 27225. (a) The conservancy shall implement and manage the
31 habitat restoration and protection elements of the Bay Delta
32 Conservation Plan.

33 (b) The conservancy may acquire, accept, and hold interests in
34 real property and improve, lease, or transfer interests in real
35 property. Priority shall be given to property interests within or
36 adjacent to the highest priority ecosystem restoration areas, as
37 identified by local, regional, and state habitat restoration plans.

38 27226. (a) The conservancy shall hold public hearings.

39 (b) The conservancy shall create and maintain a strategic plan.

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1 (c) The conservancy shall periodically report to the Legislature
2 and the public.

3

4

Article 4. Programs

5

6 27230. Within two years of hiring an executive director, the
7 board shall create and adopt a strategic plan for the implementation
8 of programs to achieve the goals of the conservancy. The plan
9 shall describe its interaction with local, regional, state, and federal
10 land use, water and flood management, and habitat conservation
11 and protection efforts within and adjacent to the Delta and shall
12 be consistent with the Delta plan when completed.

13 27231. The programs of the conservancy shall include all of
14 the following:

15 (a) Protection of agriculture and working landscapes.

16 (b) Increased recreation and public access in the Delta, including
17 linkages to areas outside the delta.

18 (c) Tourism and economic vitality in the Delta.

19 (d) Habitat enhancement and restoration, monitoring of restored
20 lands, and ongoing adaptive management of conservancy lands
21 and habitat projects in response to monitoring.

22 (e) Creation of a streamlined habitat permit program.

23 (f) Facilitation of safe harbor agreements for adjacent
24 landowners, watershed planning and projects, including floodplains
25 and river parkways, and legacy community support and community
26 waterfronts.

27 (g) Consideration of carbon sequestration and a response to the
28 effects of climate change.

29 (h) Environmental education and historic and cultural resource
30 protection.

31 (i) Cooperative relationship with local and state land use
32 authorities to assist with implementation of local general plans
33 and state plans.

34 (j) Cooperation with a science advisory board on research, and
35 with the California Delta Ecosystem and Water Council and other
36 Delta governing entities.

37 (k) Assistance for local entities in implementation of the Habitat
38 Conservation Plan/Natural Communities Conservation Plan.

39 27232. The programs of the conservancy shall be based on
40 strategies that include all of the following:

1 (a) Scientific investigation to balance the Delta's unique
2 ecological needs with water supply reliability.

3 (b) Recommendations for adaptive management strategies to
4 achieve a resilient Delta ecosystem with consideration of climate
5 change, sea level rise, habitat shifting, and potential levee failure.

6 (c) Emphasis on public outreach with regular opportunities for
7 public participation and input, coordinated with efforts of the
8 California Delta Ecosystem and Water Council and other Delta
9 governing entities.

10 27233. (a) The conservancy shall establish the Sacramento-San
11 Joaquin Delta Conservancy Advisory Council.

12 (b) The council shall be composed of 14 members as follows:

13 (1) Five representatives of local government from jurisdictions
14 including the five Delta counties.

15 (2) Three representative of public water agencies that rely, at
16 least in part, on water for use within or exported from the Delta
17 watershed.

18 (3) Three representatives of federal and state entities with land
19 interests in the Delta, including those focused on tourism and
20 economic enhancement, recreation, agricultural, and ecosystem
21 protections.

22 (4) Three representatives from the environmental and
23 environmental justice communities.

24 (c) The committee shall do both of the following:

25 (1) Provide information and expertise for the conservancy's
26 efforts to adaptively manage the Delta's natural resources and its
27 other programs.

28 (2) Facilitate public participation in the conservancy's
29 implementation of its programs.

30

31 CHAPTER 5. DELTA SCIENCE AND ENGINEERING PROGRAM

32

33 27300. (a) The Legislature finds and declares that California
34 should maintain a strong and consistent investment in science and
35 engineering important to the Delta. There should be a more direct
36 link between scientific investigation and real-world management
37 and policy. To achieve this, the council will need both a permanent
38 science and engineering staff and an independent Delta Science
39 and Engineering Board that reviews council actions.

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1 (b) It is the intent of the Legislature that the Delta Science and
2 Engineering Program should be a replacement for, and a successor
3 to, the successful CALFED Science Program, and that the Delta
4 Science and Engineering Board should be a replacement for the
5 CALFED Independent Science Board.

6 (c) The council, by March 1, 2010, shall appoint a Delta Science
7 and Engineering Board, consisting of between 12 and 20
8 individuals with natural science, social science, engineering, and
9 policy expertise. Members may serve a maximum of two five-year
10 terms. Lead scientists appointed by the council shall have a rotating
11 appointment of three years. Lead scientists shall be formally
12 engaged by an agency other than the state.

13 (d) The council, by March 1, 2010, shall create a Delta Science
14 and Engineering Program.

15 (e) It is the intent of the Legislature that the program do all of
16 the following:

17 (1) Research critical scientific issues of both the physical Delta
18 and elsewhere in the state relevant to Delta management.

19 (2) Organize, assess, and synthesize the best available science
20 for policymakers and the council.

21 (3) Review all major projects undertaken to advance the goals
22 of the Delta Vision.

23 (4) Conduct independent science and engineering reviews of
24 the work of government agencies or consultant work upon the
25 request of the council, the conservancy, or other state agencies.

26 (5) Establish communication channels to effectively transmit
27 science and engineering results to broader and more diverse
28 audiences.

29 (6) Develop discussion papers and interactive lectures.
30

31 CHAPTER 6. DELTA STEWARDSHIP PLAN

32
33 27400. The Legislature finds and declares all of the following:

34 (a) The Delta Stewardship Plan is intended to guide and shape
35 management of the Delta to ensure its revitalization and create a
36 statewide reliable water delivery system.

37 (b) The current lack of a legally binding, cohesive plan has
38 caused agencies and Delta stakeholders to work in a vacuum,
39 developing policies and programs that lack context. The CALFED
40 Record of Decision included most elements of such a plan but

1 failed to be implemented for three reasons: those in charge had no
2 authority to ensure its implementation, those who were
3 implementing it had no accountability, and, in the end, there was
4 no money.

5 (c) In addition, all parties recognize that the management of the
6 Delta is rife with uncertainty. Any functional governance structure
7 must be flexible and adaptable to changing circumstances. A
8 governance structure built around a plan can achieve this flexibility
9 by incorporating periodic revisions and grounding management
10 directions in adaptive management principles. Importantly,
11 management and scientific understanding must evolve together.
12 Management decisions and plan provisions must incorporate the
13 best available science, and be formulated in such a way that
14 scientific knowledge can be generated through direct observation
15 of the Delta's response to various actions.

16 (d) The plan is intended to achieve the coequal goals of the
17 Delta Vision. It should build upon and integrate other plans,
18 modifying and extending them as needed to meet its
19 responsibilities.

20 (e) Existing policies and programs in the Delta lack cohesion
21 and integration. The aim of this proposed plan is to remedy those
22 two faults. The plan should be developed and adopted by the
23 council before January 1, 2011.

24 (f) All state, regional, and local agencies with planning
25 responsibilities should be required to carry out their actions in
26 conformity with the plan, while providing the flexibility needed
27 to meet the Delta's management challenges. Approving a plan
28 governing the Delta thereby ensures consistency among existing
29 state, federal, regional, and local agencies and provides the
30 flexibility needed to meet the Delta's management challenges.

31 (g) Local governments and other state and federal agencies
32 should continue planning, decisionmaking, and operations
33 consistent with the plan.

34 27401. The Legislature further finds and declares that the plan
35 should do all of the following:

36 (a) Incorporate any species protection requirements that impact
37 Delta resources.

38 (b) Incorporate requirements for water flow and water quality
39 in the Delta that achieve the coequal goals.

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- 1 (c) Define state land use interests in the Delta, especially those
2 that impact the ecosystem, water supply reliability, and flood
3 concerns. The commission and local governments should provide
4 the oversight to protect those interests in consistency with the plan.
5 In the case that these state interests extend from the Delta into
6 adjacent areas, the commission should work with relevant local
7 governments to address the linkages.
- 8 (d) Provide principles and procedures for adaptive management.
- 9 (e) Provide for the modeling, data collection, management,
10 monitoring, analysis, and interpretation to support policy
11 decisionmaking.
- 12 (f) Ensure flexibility and resiliency in managing the Delta.
- 13 (g) Incorporate the recommendations of the Delta Vision
14 Strategic Plan.
- 15 (h) Include an accurate up-to-date assessment of water supply
16 availability.
- 17 (i) Articulate a detailed financing plan that identifies costs,
18 benefits, and revenue sources.
- 19 (j) Serve as a foundational document for a programmatic
20 environmental impact statement or environmental impact report,
21 as well as any projects undertaken requiring permits pursuant to
22 the California Environmental Quality Act (Division 13
23 (commencing with Section 21000)) or the federal National
24 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).
- 25 27402. (a) The commission shall do all of the following:
- 26 (1) Identify and address, by December 31, 2010, any
27 inconsistencies in the water quality plans adopted by the State
28 Water Resources Control Board and the plan.
- 29 (2) Present the council with a draft plan no later than October
30 1, 2010.
- 31 (b) The council shall review, and, if necessary, amend the plan
32 at least every five years.
- 33 (c) The Delta Science and Engineering Board, with the support
34 of the Delta Science and Engineering Program, shall develop a
35 science-based adaptive management program to provide for
36 continued study of, and adaptation to, actions implemented by
37 state, federal, and local agencies in the Delta.
- 38 27403. The commission shall develop the plan in accordance
39 with all of the following:

1 (a) The plan shall be consistent with the procedural and
2 substantive requirements of the federal Coastal Zone Management
3 Act of 1972 (16 U.S.C. Sec. 1451 et seq.).

4 (b) The commission shall coordinate with stakeholders as well
5 as state, federal, and local agencies.

6 (c) The commission shall start by assessing existing plans and
7 planning efforts and use elements which are consistent with the
8 goals of the Delta Vision.

9 (d) The commission shall encourage the participation of local,
10 state, and federal agencies to help to better integrate their
11 responsibilities and capacities into the plan.

12 (e) The commission shall ensure that the plan recognizes and
13 addresses the uncertainty involved in Delta decisionmaking and
14 design an adaptive management plan to ensure that ongoing Delta
15 management builds knowledge about the ecosystem and provides
16 information for improved decisionmaking. The adaptive
17 management plan should build upon the work of the CALFED
18 Science Program to do all of the following:

19 (1) Synthesize existing knowledge about the Delta as a physical
20 system.

21 (2) State hypotheses about the effects of management actions
22 recommended in the plan on the ecosystem, water supply, and
23 other values.

24 (3) Recommend to the council additional management actions
25 expected to yield desired ecosystem or water supply outcomes or
26 designed to generate useful knowledge about the Delta.

27 (4) Design monitoring programs to systematically gather needed
28 data.

29 (5) Identify and put in place the processes by which the data
30 will be synthesized, hypotheses evaluated, and new management
31 actions recommended.

32 (6) On the five-year cycles on which the plan is reviewed and
33 updated, the results should be integrated into a report on the
34 knowledge of the Delta, an assessment of the success of current
35 policies and management, and the identification, assessment, and
36 recommendation of possible changes in policies or management.

37 27404. (a) The council shall adopt the plan on or before
38 January 1, 2011.

39 (b) Until the plan is adopted pursuant to this division, the Delta
40 Vision strategic plan shall serve as the interim plan for the Delta.

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CHAPTER 7. DELTA STEWARDSHIP FUND

1
2
3 27500. The Delta Stewardship Fund is hereby created in the
4 State Treasury. The commission shall deposit in the fund any
5 moneys received from federal, state, local, and private sources for
6 Delta stewardship. Moneys in the fund shall be available, upon
7 appropriation by the Legislature, for regional economic
8 development consistent with the plan.

9 SEC. 2. Section 29735.5 is added to the Public Resources Code,
10 to read:

11 29735.5. The commission shall request federal agencies,
12 including, but not limited to, the United States Army Corps of
13 Engineers, the United States Fish and Wildlife Service, and the
14 United States Bureau of Reclamation to participate in nonvoting
15 liaison capacities with the commission to better assess and
16 coordinate flood protection, water supply, and ecosystem protection
17 issues.

18 SEC. 3. Section 29759 is added to the Public Resources Code,
19 to read:

20 29759. (a) The commission shall require all general plans of
21 cities and counties within the Delta, and the resource management
22 plan, to be consistent with the Delta Stewardship Plan adopted
23 pursuant to Division 17.5 (commencing with Section 27000).

24 (b) The commission shall do all of the following:

25 (1) Revise all of its plans and policies, including the resource
26 management plan, to be consistent with the Delta Stewardship
27 Plan adopted pursuant to Division 17.5 (commencing with Section
28 27000).

29 (2) Review and certify all city and county general plans for
30 consistency with the resource management plan and the Delta
31 Stewardship Plan.

32 (3) Exercise direct consistency determination authority over
33 development proposals in the primary zone. The commission shall
34 make an affirmative determination that any project approved by
35 a city or county within the primary zone is consistent with the
36 resource management plan and the Delta Stewardship Plan.

37 (4) Review, hold public hearings and receive testimony, and
38 provide recommendations to the Delta Stewardship Council on all
39 proposed projects subject to approval by that council.

1 (5) Develop a Delta regional economic development plan to
2 support increased investment in agriculture, recreation, tourism,
3 and local communities.

4 SEC. 4. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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SENATE BILL**No. 458**

Introduced by Senator WolkFebruary 26, 2009

An act to add Division 22.3 (commencing with Section 32300) to the Public Resources Code, relating to the Conservancies.

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as introduced, Wolk. Conservancies: Sacramento-San Joaquin Delta Conservancy.

Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state.

This bill would establish the Sacramento-San Joaquin Delta Conservancy to undertake various activities related to the delta, as defined, including monitoring projects within the watershed of the delta, providing stewardship, and coordinating with other delta governance entities. The bill would prescribe the management, powers, and duties of the conservancy. The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.

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

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

- 1 SECTION 1. Division 22.3 (commencing with Section 32300)
- 2 is added to the Public Resources Code, to read:

1 CHAPTER 2. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

2

3 32310. There is in the Natural Resources Agency the
4 Sacramento-San Joaquin Delta Conservancy, which is created as
5 a state agency to do all of the following, working in collaboration
6 and cooperation with local governments and interested parties:

7 (a) Monitor projects within the watershed of the delta that
8 provide substantial benefits to the ecosystem or recreation capacity
9 of the delta.

10 (b) Provide stewardship of the delta by establishing and meeting
11 natural resource goals through both terrestrial and aquatic
12 ecosystem protection and restoration efforts.

13 (c) Coordinate with other delta governance entities.

14 32312. The board shall consist of nine voting members and
15 seven nonvoting members, appointed or designated as follows:

16 (a) The nine voting members of the board shall consist of all of
17 the following:

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

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

21 (3) The chairperson of the Delta Protection Commission, or his
22 or her designee.

23 (4) Two public members appointed by the Governor.

24 (5) Two public members appointed by the Senate Committee
25 on Rules.

26 (6) Two public members appointed by the Speaker of the
27 Assembly.

28 (7) One public member appointed by the Governor, one public
29 member appointed by the Senate Committee on Rules, and one
30 public member appointed by the Speaker of the Assembly shall
31 be locally elected officials from within the five delta-region
32 counties. The three other public members shall represent statewide
33 interests, with one member residing in the delta and one member
34 residing in southern California, and each shall have expertise in
35 natural sciences, water and flood management, or conservation
36 sufficient to contribute to the goals of the conservancy.

37 (b) The seven nonvoting members shall consist of the following:

38 (1) A designee of the San Francisco Bay Conservation and
39 Development Commission for coordination purposes.

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1 (2) Three members of the Senate, appointed by the Senate
2 Committee on Rules, and three members of the Assembly,
3 appointed by the Speaker of the Assembly, shall meet with the
4 conservancy and participate in its activities to the extent that this
5 participation is not incompatible with their positions as Members
6 of the Legislature. At least two of the Members of the Senate and
7 two Members of the Assembly shall represent a district that
8 encompasses a portion of the delta.

9 32313. The members appointed by the Governor shall serve
10 at his or her pleasure. The locally elected public members shall
11 serve for a term of four years, with a two-term limit. The state
12 interest public members shall serve for a term of four years, with
13 a two-term limit.

14 32314. The Secretary of the Natural Resources Agency shall
15 select one of the public members to serve as chairperson of the
16 board. A majority of the membership of the board constitutes a
17 quorum.

18 32315. The board shall appoint an executive officer of the
19 conservancy.

20

21 CHAPTER 3. POWERS, DUTIES, AND LIMITATIONS

22

23 32320. The conservancy's jurisdiction is limited to the delta.

24 32321. The conservancy may do all of the following:

25 (a) Fund or undertake pilot projects based on research of delta
26 science and engineering advisory groups.

27 (b) Develop, plan, and conduct environmental review and
28 implement, monitor, and manage projects, or provide grants or
29 loans to others for these activities.

30 (c) Acquire water or water rights.

31 32322. (a) The conservancy may pursue and accept funds from
32 various sources, including, but not limited to, federal, state, and
33 local funds or grants, private philanthropy, gifts, donations,
34 bequests, devises, subventions, grants, rents, royalties, or other
35 assistance and funds from public and private sources.

36 (b) The conservancy may accept fees levied by others, which
37 shall not be subject to appropriation.

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

39 (d) The conservancy may issue revenue bonds.

1 (e) All funds received by the conservancy shall be deposited in
2 the fund for expenditure for the purposes of this division.

3 32323. The San Joaquin-Delta Conservancy Fund is hereby
4 created in the State Treasury. Money in the fund shall be available,
5 upon appropriation by the Legislature, only for the purposes of
6 this division.

7 32324. (a) The conservancy may create or participate in a joint
8 powers authority or a supporting nonprofit organization to further
9 the goals of the conservancy, including long-term land management
10 and stewardship, interagency relations, and revenue generation.

11 (b) The conservancy may establish a supporting nonprofit
12 organization to assist with conservancy operations.

13 (c) The conservancy may engage in partnerships with nonprofit
14 organizations, local public agencies, and landowners.

15 (d) The conservancy may provide grants and loans to state
16 agencies, local public agencies, nonprofit organizations, and tribal
17 organizations to further the goals of the conservancy.

18 32325. (a) The conservancy shall implement and manage the
19 habitat restoration and protection elements of the Bay Delta
20 Conservation Plan.

21 (b) The conservancy may acquire, accept, and hold interests in
22 real property and improve, lease, or transfer interests in real
23 property. Priority shall be given to property interests within or
24 adjacent to the highest priority ecosystem restoration areas, as
25 identified by local, regional, and state habitat restoration plans.

26 32326. (a) The conservancy shall hold public hearings.

27 (b) The conservancy shall create and maintain a strategic plan.

28 (c) The conservancy shall periodically report to the Legislature
29 and the public.

30

31

CHAPTER 4. PROGRAMS

32

33 32330. Within two years of hiring an executive director, the
34 board shall create and adopt a strategic plan for the implementation
35 of programs to achieve the goals of the conservancy. The plan
36 shall describe its interaction with local, regional, state, and federal
37 land use, water and flood management, and habitat conservation
38 and protection efforts within and adjacent to the delta and shall be
39 consistent with the delta plan when completed.

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1 32331. The programs of the conservancy shall include all of
2 the following:

- 3 (a) Protection of agriculture and working landscapes.
- 4 (b) Increased recreation and public access in the delta, including
5 linkages to areas outside the delta.
- 6 (c) Tourism and economic vitality in the delta.
- 7 (d) Habitat enhancement and restoration, monitoring of restored
8 lands, and ongoing adaptive management of conservancy lands
9 and habitat projects in response to monitoring.
- 10 (e) Creation of a streamlined habitat permit program.
- 11 (f) Facilitation of safe harbor agreements for adjacent
12 landowners, watershed planning and projects, including flood
13 plains and river parkways, and legacy community support and
14 community waterfronts.
- 15 (g) Consideration of carbon sequestration and a response to the
16 effects of climate change.
- 17 (h) Environmental education and historic and cultural resource
18 protection.
- 19 (i) Cooperative relationship with local and state land use
20 authorities to assist with implementation of local general plans
21 and state plans.
- 22 (j) Cooperation with a science advisory board on research, and
23 with the California Delta Ecosystem and Water Council and other
24 delta governing entities.
- 25 (k) Assistance for local entities in implementation of the Habitat
26 Conservation Plan/Natural Communities Conservation Plan.

27 32332. The programs of the conservancy shall be based on
28 strategies that include all of the following:

- 29 (a) Scientific investigation to balance the delta's unique
30 ecological needs with water supply reliability.
- 31 (b) Recommendations for adaptive management strategies to
32 achieve a resilient delta ecosystem with consideration of climate
33 change, sea level rise, habitat shifting, and potential levee failure.
- 34 (c) Emphasis on public outreach with regular opportunities for
35 public participation and input, coordinated with efforts of the
36 California Delta Ecosystem and Water Council and other delta
37 governing entities.

38 32333. (a) The conservancy shall establish the Sacramento-San
39 Joaquin Delta Conservancy Advisory Council.

- 40 (b) The council shall be composed of 14 members as follows:

- 1 (1) Five representatives of local government from jurisdictions
- 2 including the five delta counties.
- 3 (2) Three representative of public water agencies that rely, at
- 4 least in part, on water for use within or exported from the delta
- 5 watershed.
- 6 (3) Three representatives of federal and state entities with land
- 7 interests in the delta, including those focused on tourism and
- 8 economic enhancement, recreation, agricultural, and ecosystem
- 9 protections.
- 10 (4) Three representatives from the environmental and
- 11 environmental justice communities.
- 12 (c) The committee shall do both of the following:
- 13 (1) Provide information and expertise for the conservancy's
- 14 efforts to adaptively manage the delta's natural resources and its
- 15 other programs.
- 16 (2) Facilitate public participation in the conservancy's
- 17 implementation of its programs.

O

SENATE BILL**No. 808**

Introduced by Senator WolkFebruary 27, 2009

An act to add Chapter 4 (commencing with Section 12228) to Part 4.5 of Division 6 of the Water Code, relating to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 808, as introduced, Wolk. San Francisco Bay/Sacramento-San Joaquin Delta Estuary: strategic work plan.

Under existing law, various state agencies administer programs relating to water supply, water quality, and flood management in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

This bill would require the State Water Resources Control Board to implement its resolution entitled the Strategic Workplan for Actions to Protect Beneficial Uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary by commencing an investigation of the reasonableness of the methods of diversions from the Sacramento-San Joaquin Delta used by the State Water Project and the federal Central Valley Project, ensuring that the implementation is consistent with its duties to protect the public trust and prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and taking other action. The state board would be required to prepare related quarterly reports, which the state board would be required to make available to the public and to post on the state board's Internet Web site.

This bill would declare that it is to take effect immediately as an urgency statute.

SB 808

— 2 —

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Pursuant to its statutory authority, the State Water Resources
4 Control Board has issued numerous orders and decisions regarding
5 water quality and water right requirements affecting the
6 Sacramento-San Joaquin Delta.

7 (b) Under Section 275 of the Water Code, the state board is
8 charged with the duty to take all appropriate proceedings before
9 executive, legislative, or judicial agencies to prevent wast,
10 unreasonable use, unreasonable method of use, or unreasonable
11 method of diversion of water in this state.

12 (c) The Legislature has found the water problems of the
13 Sacramento-San Joaquin Delta to be unique within the state,
14 recognizing the special role this estuary plays in the provision of
15 water to serve numerous purposes, and the problem of salinity
16 intrusion into the vast network of channels and sloughs of the
17 Delta.

18 (d) In Resolution No. 20008-0056, enacted on July 16, 2008,
19 the state board adopted its Strategic Workplan for Actions to
20 Protect Beneficial Uses of the San Francisco Bay/Sacramento-San
21 Joaquin Delta Estuary (strategic workplan). The strategic workplan
22 describes the actions that the state and the California regional water
23 quality control boards will complete to protect beneficial uses of
24 water in the Sacramento-San Joaquin Delta, and provides timelines
25 and resource needs for implementing the actions.

26 (e) In enacting the strategic workplan, the state board represented
27 that it will consider later modifications as necessary to protect
28 beneficial uses in the estuary. The strategic workplan also
29 recognizes that the state board has a responsibility pursuant to the
30 California Constitution and the Water Code to take action to
31 prevent the waste, unreasonable use, unreasonable method of use,
32 or unreasonable method of diversion of water in California.

33 (f) The strategic workplan's timeline of activities anticipates
34 the performance of its principal tasks between 2008 and 2013.

1 (g) Among the concerns referenced in the strategic workplan is
2 that the State Water Project's and federal Central Valley Project's
3 methods of diversion in the southern Delta may not be secure and
4 sustainable and may be having adverse impacts on fish and wildlife
5 and other beneficial uses of water in the Delta.

6 (h) Notwithstanding this concern, the strategic workplan does
7 not require the state board to promptly investigate the
8 reasonableness of the methods of diversion by the projects in
9 accordance with the California Constitution and Section 275 of
10 the Water Code. Instead, the strategic workplan anticipates
11 deferring action until the fourth quarter of 2010, and taking action
12 only if a voluntary collaboration of state, federal, and local water
13 agencies does not deliver a plan satisfactory to the board. The
14 strategic workplan estimates that it would take the state board a
15 minimum of two personnel years to conduct this investigation.

16 (i) Several factors make it necessary for the state board to
17 promptly implement the strategic workplan within the identified
18 timetable, and to commence appropriate investigations on or before
19 July 1, 2009, and conclude the investigations within two years.

20 (j) The Sacramento-San Joaquin Delta Estuary remains in a
21 state of precarious decline, threatening its beneficial use in the
22 protection of fish and wildlife. As a consequence of recent litigation
23 addressing endangered species requirements, the United States
24 Fish and Wildlife Service has released a new biological opinion
25 of Delta smelt in late 2008, and the National Marine Fisheries
26 Service anticipates releasing a new biological opinion for salmon
27 and steelhead in early 2009. Due to these decisions, substantial
28 new reductions in project water deliveries from the Delta are likely
29 to occur.

30 (k) As the Department of Water Resources has recognized in
31 its own reports, climate change is likely to have significant and
32 adverse effects on California's water supply projects and the
33 Sacramento-San Joaquin Delta.

34 (l) The drought conditions presently facing California are
35 creating further strains in the ability of the Sacramento-San Joaquin
36 Delta to serve beneficial uses.

37 SEC. 2. Chapter 4 (commencing with Section 12228) is added
38 to Part 4.5 of Division 6 of the Water Code, to read:

SB 808

— 4 —

CHAPTER 4. STRATEGIC WORKPLAN

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3 12228. This part shall be known and may be cited as the
4 Sacramento-San Joaquin Delta Protection Act of 2009.

5 12228.4. As part of its implementation of its Strategic
6 Workplan for Actions to Protect Beneficial Uses of the San
7 Francisco/Sacramento-San Joaquin Delta Estuary, the state board
8 shall do all of the following:

9 (a) Commence an investigation of the reasonableness of the
10 methods of diversion from the Sacramento-San Joaquin Delta used
11 by the State Water Project and the federal Central Valley Project,
12 in accordance with its authority under Section 2 of Article X of
13 the California Constitution and Section 275, to commence no later
14 than July 1, 2009, and to conclude within two years.

15 (b) In all other respects, implement the strategic workplan in
16 accordance with the timetable referenced in its timeline of
17 activities.

18 (c) Ensure that its implementation of the strategic workplan is
19 consistent with its duties to protect the public trust, and to prevent
20 the waste, unreasonable use, unreasonable method of use, or
21 unreasonable method of diversion of water in California.

22 (d) Ensure that its implementation of the strategic workplan
23 fully considers all of the following:

24 (1) The instream flow and other biological requirements
25 necessary to ensure the long-term health of fish and wildlife
26 resources served by the Sacramento-San Joaquin Delta.

27 (2) The anticipated effects of climate change on the water
28 resources of the two water projects, and the condition of the
29 Sacramento-San Joaquin Delta.

30 (3) The effect of drought conditions upon the ability of the
31 Sacramento-San Joaquin Delta to serve beneficial uses.

32 12228.8. The state board shall prepare quarterly reports which
33 shall be available to the public and posted on its Internet Web site,
34 describing its implementation of the strategic workplan. These
35 reports shall disclose whether the state board anticipates any
36 revisions in the schedules referenced in Section 12228.4, and
37 demonstrate good cause for any further delays in the schedule.

38 SEC. 3. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to facilitate the implementation of the Strategic
4 Workplan for Actions to Protect Beneficial Uses of the San
5 Francisco/Sacramento-San Joaquin Delta Estuary by the State
6 Water Resources Control Board, as soon as possible, it is necessary
7 for this act to take effect immediately.

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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL**No. 39****Introduced by Assembly Member Huffman**

December 1, 2008

An act relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

AB 39, as introduced, Huffman. Sacramento-San Joaquin Delta: Final Delta Vision Strategic Plan.

Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, a Strategic Vision for a Sustainable Sacramento-San Joaquin Delta with specified components.

This bill would declare the intent of the Legislature to enact legislation to implement the recommendations in the Final Delta Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task Force and the Delta Vision Committee established pursuant to Executive Order S-17-06 and Chapter 535 of the Statutes of 2006.

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

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

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation to implement the recommendations in the Final Delta
- 3 Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task

AB 39

— 2 —

- 1 Force and the Delta Vision Committee established pursuant to
- 2 Executive Order S-17-06 and Chapter 535 of the Statutes of 2006.

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