

**PREPRINT ASSEMBLY BILL No. 1**

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**Proposed by Assembly Member Huffman**

August 4, 2009

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AB 1 2009

An act to add Division 35 (commencing with Section 85000) to the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

Preprint AB 1, as proposed, Huffman. Sacramento-San Joaquin Delta: Delta Plan.

Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. Existing law requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would establish the policy of the state with respect to the Delta. The bill would require the Delta Stewardship Council, created pursuant to \_\_\_\_ of the 2009–10 Regular Session of the Legislature, to assume responsibility for overseeing implementation of certain actions required to be initiated prior to the adoption of the Delta Plan, described below.

The bill would require the State Water Resources Control Board to make determinations with regard to instream flow needs for rivers and streams within and outside the Delta. The board would be required to submit those determinations to the council. The board would be required to charge the department for the costs associated with certain of these determinations.

The bill would require the council, on or before January 1, 2011, to develop, adopt, and implement a comprehensive management plan for the Delta (Delta Plan). The council would be required to develop the Delta Plan in a manner that is consistent with specified goals. The council would be required, every 5 years, to review and make any necessary revisions to the Delta Plan.

The bill would require the council to consult with other agencies with responsibilities in the Delta for the purpose of developing the Delta Plan. The bill would authorize the council to appoint other state agencies to contribute to developing portions of the Delta Plan. Various state agencies would be required to submit proposals to the council for possible incorporation into the Delta Plan.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan. The council would be required to incorporate that plan into the Delta Plan if certain requirements are met.

The provisions of the bill would only become operative if \_\_\_\_ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

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 35 (commencing with Section 85000)  
2 is added to the Water Code, to read:

3  
4 DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA  
5 REFORM ACT OF 2009

6  
7 PART 1. GENERAL PROVISIONS

8  
9 CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

10  
11 85000. This division shall be known, and may be cited, as the  
12 Sacramento-San Joaquin Delta Reform Act of 2009.

13 85001. The Legislature finds and declares all of the following:  
14 (a) The Sacramento-San Joaquin Delta watershed and  
15 California’s water infrastructure are in crisis and existing Delta  
16 policies are not sustainable. Protecting the public trust and

1 improving the stewardship of these precious resources requires  
2 fundamental reorganization of the state’s management of Delta  
3 watershed resources.

4 (b) In response to the Delta crisis, the Legislature and the  
5 Governor required development of a new long-term strategic vision  
6 for managing the Delta. The Governor appointed a Blue Ribbon  
7 Task Force to recommend a new “Delta Vision Strategic Plan” to  
8 his cabinet committee, which, in turn, made recommendations for  
9 a Delta Vision to the Governor and the Legislature on January 3,  
10 2009.

11 (c) By enacting this division, it is the intent of the Legislature  
12 to facilitate the implementation of a program for the sustainable  
13 management of the Sacramento-San Joaquin Delta ecosystem and  
14 to establish a governance structure that will direct efforts across  
15 state agencies to develop a legally enforceable California Delta  
16 Ecosystem and Water Plan.

17 85002. The Legislature finds and declares that Sacramento-San  
18 Joaquin Delta, referred to as “the Delta” in this division, is a  
19 critically important natural resource for California and the nation.  
20 It serves Californians concurrently as both the hub of the California  
21 water system and the most valuable estuary ecosystem on the west  
22 coast of North and South America.

23 85003. The Legislature finds and declares all of the following:

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

31 (b) Delta property ownership developed pursuant to the federal  
32 Swamp Land Act of 1850, and state legislation enacted in 1861,  
33 and as a result of the construction of levees to keep previously  
34 seasonal wetlands dry throughout the year. That property  
35 ownership, and the exercise of associated rights, continue to depend  
36 on the landowners’ maintenance of those privately owned levees  
37 and do not include any right to state funding of levee maintenance  
38 or repair.

39 (c) In 1933, the Legislature approved the California Central  
40 Valley Project Act, which relied upon the transfer of Sacramento

1 River water south through the Delta and maintenance of a more  
 2 constant salinity regime by using upstream reservoir releases of  
 3 freshwater to create a hydraulic salinity barrier. As a result of the  
 4 operations of state and federal water projects, the natural salinity  
 5 variations in the Delta have been altered. Restoring a healthy  
 6 estuarine ecosystem in the Delta may require developing a more  
 7 natural salinity regime in parts of the Delta.

8  
 9 CHAPTER 2. DELTA POLICY

10  
 11 85020. (a) The coequal goals shall be the standard for  
 12 long-term management of Delta water and environmental resources.

13 (b) The policy of the State of California is to achieve the  
 14 following objectives that the Legislature declares are inherent in  
 15 the coequal goals for management of the Delta:

16 (1) Manage the Delta’s water and environmental resources over  
 17 the long-term to achieve the coequal goals.

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

20 (3) Restore the Delta ecosystem, including its fisheries, as the  
 21 heart of a healthy estuary.

22 (4) Promote statewide water conservation, efficiency, and  
 23 sustainable use.

24 (5) Achieve water quality objectives in the Delta.

25 (6) Establish an appropriate balance between water reserved for  
 26 public trust and ecosystem restoration purposes and water available  
 27 for allocation and appropriation for other beneficial uses.

28 (7) Improve the existing water conveyance system and expand  
 29 statewide water storage.

30 (8) Reduce risks to people, property, and state interests in the  
 31 Delta by effective emergency preparedness, appropriate land uses,  
 32 and strategic levee investments.

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

36 85021. The policy of the State of California is to reduce  
 37 dependence on water from the Delta watershed, over the long-term,  
 38 for statewide water supply reliability. Each region that depends  
 39 on water from the Delta shall improve its regional self-reliance  
 40 for water through investment in water-use efficiency, water

1 recycling, advanced water technologies, local and regional water  
2 supply projects, and improved regional coordination of local and  
3 regional water supply efforts.

4 85022. (a) It is the intent of the Legislature that state and local  
5 land use actions are consistent with the Delta Plan, including the  
6 commission's resources management plan. This section's findings,  
7 policies, and goals apply to Delta land-use planning and  
8 development.

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

13 (c) The Legislature finds and declares as follows:

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

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

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

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

29 (d) The fundamental goals for managing land use in the Delta  
30 are to:

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

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

37 (3) Maximize public access to Delta resources and maximize  
38 public recreational opportunities in the Delta consistent with sound  
39 resources conservation principles and constitutionally protected  
40 rights of private property owners.

1 (4) Ensure priority for Delta-dependent and Delta-related  
2 development over other development in the Delta.

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

7 85023. The longstanding constitutional principle of reasonable  
8 use and the public trust doctrine shall be the foundation of state  
9 water management policy and are particularly important and  
10 applicable to the Delta.

11  
12 CHAPTER 3. MISCELLANEOUS PROVISIONS  
13

14 85031. This division does not diminish, impair, or otherwise  
15 affect any area of origin, watershed of origin, county of origin, or  
16 any other water rights protections provided under the law. This  
17 division does not limit or otherwise affect the application of  
18 Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463,  
19 and Sections 12200 to 12220, inclusive.

20 85032. This division does not affect the Natural Community  
21 Conservation Planning Act (Chapter 10 (commencing with Section  
22 2800) of Division 3 of the Fish and Game Code).

23 85033. This division does not expand the liability of the state  
24 for flood protection in the Delta or its watershed.

25  
26 CHAPTER 4. DEFINITIONS  
27

28 85050. Unless the context otherwise requires, the definitions  
29 set forth in this chapter govern the construction of this division.

30 85051. "Acquisition" means the acquisition of a fee interest  
31 or any other interest, including easements, leases, and development  
32 rights.

33 85053. "Bay Delta Conservation Plan" means a natural  
34 community conservation plan that complies with the Natural  
35 Community Conservation Planning Act (Chapter 10 (commencing  
36 with Section 2800) of Division 3 of the Fish and Game Code), and  
37 that may include a habitat conservation plan that would be created  
38 pursuant to Section 10 of the federal Endangered Species Act (16  
39 U.S.C. Sec. 1531 et seq.) and accompanying regulations.

1 85054. “Coequal goals” means the two goals of assuring a  
2 reliable water supply for California and protecting, restoring, and  
3 enhancing the Delta ecosystem. The coequal goals shall be  
4 achieved in a manner that protects and enhances the unique cultural,  
5 recreational, and agricultural values of the Delta as an evolving  
6 place.

7 85055. “Commission” means the Delta Protection Commission  
8 established in Division 19.5 (commencing with Section 29700) of  
9 the Public Resources Code.

10 85056. “Conservancy” means the Sacramento-San Joaquin  
11 Delta Conservancy established in Section 32320 of the Public  
12 Resources Code.

13 85057. “Council” means the Delta Stewardship Council  
14 established in Section 85200.

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

19 85059. “Delta Plan” means the comprehensive, long-term  
20 management plan for the Delta to achieve the coequal goals as  
21 adopted by the council in accordance with this division.

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

25 85061. “Early actions” means the actions required to be  
26 initiated prior to adoption of the Delta Plan.

27 85063. “Private water agency” means a public utility as defined  
28 in Section 216 of the Public Utilities Code that provides water  
29 service as defined in Section 515 or a mutual water company as  
30 defined in Section 2725 of the Public Utilities Code.

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

34 85065. “Restoration” means the application of ecological  
35 principles to restore a degraded or fragmented ecosystem and return  
36 it to a condition in which its biological and structural components  
37 achieve a close approximation of its natural potential.

38 85066. “Strategic Plan” means both the “Delta Vision Strategic  
39 Plan” issued by the Delta Vision Blue Ribbon Task Force on  
40 October 17, 2008, and the “Delta Vision Implementation Report”

1 adopted by the Delta Vision Committee and dated December 31,  
2 2008. Where the two documents conflict, the “Delta Vision  
3 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force  
4 shall prevail.

5  
6 PART 2. EARLY ACTIONS  
7

8 85080. Upon appointment of a quorum of the council, the  
9 council shall assume responsibility for overseeing implementation  
10 of early actions, as provided in this part. The council may identify  
11 early actions in addition to those identified in this part pertaining  
12 to transportation, utilities, recreation, water supply, ecosystem  
13 improvements, and flood control.

14 85081. (a) Within 60 days of the appointment of a quorum of  
15 the council, the council shall request a list of nominees to serve  
16 on the Delta Independent Science Board from the Director of the  
17 University of California Center for Water Resources and the  
18 Director of the United States Geologic Survey office in  
19 Sacramento.

20 (b) The council shall appoint persons to serve on the Delta  
21 Independent Science Board, as established in Section 85280, within  
22 30 days of receiving the list of nominees.

23 85082. Within 120 days of the appointment of a quorum of the  
24 council, the council shall develop and implement a strategy to  
25 appropriately engage participation of the federal agencies with  
26 responsibilities in the Delta. This strategy may include developing  
27 the Delta Plan consistent with the federal Coastal Zone  
28 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal  
29 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of  
30 the federal Reclamation Act of 1902.

31 85083. Within 120 days of the appointment of a quorum of the  
32 council, the council shall begin developing information necessary  
33 to develop the Delta Plan in accordance with this division,  
34 including, but not limited to, all of the following:

35 (a) A list of all applicable legal requirements, including  
36 requirements relating to federal and state endangered species laws  
37 that pertain to the Delta.

38 (b) Determination of the relevance of other federal, state, and  
39 local plans to the development of the Delta Plan.

1 85084. The council shall develop an interim plan that includes  
2 recommendations for early actions, projects, and programs  
3 including, but not limited to, the following:

4 (a) Develop and implement an interim finance strategy for  
5 developing the Delta Plan and taking the early actions described  
6 in this part.

7 (b) Commence study of the transfer of the State Water Project  
8 to a separate public agency or utility.

9 (c) Designate the department and the Department of Fish and  
10 Game to implement near-term restoration projects, including, but  
11 not limited to, Dutch Slough tidal marsh restoration, Meins Island  
12 tidal marsh restoration, and floodplain improvements in the Yolo  
13 Bypass.

14 (d) Direct the Department of Fish and Game, consistent with  
15 the board's determinations of instream flow needs in the Delta  
16 pursuant to Section 85086, to submit information and any  
17 recommendations as to the Delta's instream flow needs to the  
18 board by April 1, 2010. The information shall include only  
19 information in its possession that the Department of Fish and Game  
20 deems reliable.

21 85085. The department shall do all of the following:

22 (a) Conduct a study of the Middle River Corridor Two-Barrier  
23 pilot project.

24 (b) Evaluate the effectiveness of the Three Mile Slough Barrier  
25 project.

26 (c) Construct demonstration fish protection screens at Clifton  
27 Court Forebay.

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

33 85086. (a) The board shall establish an effective system of  
34 Delta watershed diversion data collection and public reporting by  
35 December 31, 2010.

36 (b) It is the intent of the Legislature to establish an accelerated  
37 process, that is distinct from the imposition of minimum instream  
38 flow requirements pursuant to Section 1257.5, to determine  
39 instream flow needs of the Delta and its tributaries. It is the further  
40 intent of the Legislature that this accelerated process will facilitate

1 the planning decisions that are required to achieve the objectives  
2 of the Delta Plan and the coequal goals. These determinations do  
3 not affect the statutory rights of any party to adjudicate statutory  
4 instream flow requirements.

5 (c) (1) The board, in consultation with the Department of Fish  
6 and Game and by June 30, 2010, shall complete an analysis of the  
7 best available scientific information in existence as of the date of  
8 enactment of this division and determine the instream flow needs  
9 in the Delta, from the Sacramento River watershed, for ecosystem  
10 and water quality purposes.

11 (2) The board may not grant any petition to change a point of  
12 diversion in the Delta that is submitted by the department on behalf  
13 of the State Water Project or by the United States Bureau of  
14 Reclamation on behalf of the federal Central Valley Project before  
15 the board makes its determination pursuant to paragraph (1).

16 (d) (1) The board shall charge the department for the costs of  
17 this analysis and determination pursuant to the board's authority  
18 to regulate the water rights of the State Water Project and the  
19 federal Central Valley Project.

20 (2) The department shall obtain reimbursement for those charges  
21 from the State Water Project contractors, pursuant to the existing  
22 State Water Project contracts, and may use funding made available  
23 pursuant to the Financial Assistance Agreement for the Delta  
24 Habitat Conservation and Conveyance Program, as executed by  
25 the United States Bureau of Reclamation on March 13, 2009.

26 (e) The board, by December 31, 2010, shall submit a prioritized  
27 schedule to complete determinations as to instream flow needs for  
28 the Delta and for high priority rivers and streams in the Delta  
29 watershed, not otherwise described in subdivision (c), by 2012,  
30 and for all major rivers and streams outside the Delta by 2018. In  
31 developing this schedule, the board shall consult with the  
32 Department of Fish and Game as to the timing of its submission  
33 of recommendations for instream flow needs.

34 (f) The board shall submit its instream flow need determinations  
35 pursuant to this section to the council within 30 days of final  
36 adoption.

37 (g) The instream flow need determinations required by this  
38 section shall be subject to judicial review only in the Court of  
39 Appeals for the Third District, and that court may designate a  
40 special master or an administrative law judge for the purpose of

1 assisting the court. The Court of Appeals review shall be based on  
2 the board's administrative record. The judicial standard of review  
3 shall be whether the board's determinations as to necessary  
4 instream flows were arbitrary and capricious.

5  
6 PART 4. COMPREHENSIVE DELTA PLANNING

7  
8 CHAPTER 1. THE DELTA PLAN

9  
10 85300. (a) The council, by no later than January 1, 2011, shall  
11 develop, adopt, and implement a comprehensive Delta Plan  
12 pursuant to this part that is consistent with the coequal goals. The  
13 Delta Plan shall identify specific actions by state agencies, which  
14 shall be required to implement those identified actions. Unless  
15 otherwise specified, the Delta Plan shall incorporate the strategies  
16 described in the Strategic Plan and the council shall consider the  
17 actions in the Strategic Plan in the development of the Delta Plan.

18 (b) In developing the Delta Plan, the council shall consult with  
19 federal, state, and local agencies with responsibilities in the Delta.  
20 The council may appoint specific state agencies to contribute to  
21 developing portions of the Delta Plan, and may incorporate any  
22 state agency proposals into the Delta Plan, as the council deems  
23 appropriate. All state agencies with responsibilities in the Delta  
24 shall cooperate with the council in developing the Delta Plan, if  
25 the council so requests.

26 (c) In developing the Delta Plan, the council shall develop the  
27 Delta Plan consistent with the provisions of the federal Coastal  
28 Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.),  
29 Section 8 of the federal Reclamation Act of 1902, and the federal  
30 Clean Water Act (33 U.S.C. Sec. 1251 et seq.). If the council adopts  
31 a Delta Plan consistent with the federal Coastal Zone Management  
32 Act of 1972, it shall submit the Delta Plan for approval to the  
33 United States Secretary of Commerce pursuant to that act, or to  
34 any other federal official assigned responsibility for the Delta  
35 pursuant to a federal statute enacted after January 1, 2010.

36 (d) The council may review and revise the Delta Plan at times  
37 that it deems appropriate and shall complete a review and make  
38 any necessary revisions to the Delta Plan by January 1 of each  
39 year ending in 1 or 6. The council may request any state agency

1 with responsibilities in the Delta to contribute to the revisions to  
2 any part of the Delta Plan.

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

5 85301. (a) The commission shall develop, for consideration  
6 and incorporation into the Delta Plan by the council, a proposal to  
7 protect, enhance, and sustain the unique and enduring cultural,  
8 historical, recreational, agricultural, and economic values of the  
9 Delta as an evolving ecosystem. For the purpose of carrying out  
10 this subdivision, the commission shall incorporate into the proposal  
11 the relevant strategies described in, and consider the actions  
12 recommended by, the Strategic Plan.

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

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

24 (c) For the purposes of assisting the commission in its  
25 preparation of the proposal, both of the following actions shall be  
26 undertaken:

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

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

38 (d) The commission shall submit the proposal developed  
39 pursuant to subdivision (a) to the council, and the council may  
40 approve and incorporate the proposal into the Delta Plan.

1 85302. (a) The Delta Plan, upon implementation, shall achieve  
2 the restoration of the Delta ecosystem. The restoration shall require  
3 actions on the part of the state, local agencies, and special districts  
4 in addition to their mitigation duties for projects in the Delta that  
5 are intended to contribute to achieving the coequal goals.

6 (b) The geographic scope of the ecosystem restoration projects  
7 and programs identified in the Delta Plan shall extend to the first  
8 dams on the tributaries of the Delta. The council may include an  
9 ecosystem project above those dams, if it determines that the  
10 project would contribute significantly to the restoration of the Delta  
11 estuary ecosystem.

12 (c) The Delta Plan shall promote the following characteristics  
13 of a healthy Delta estuary ecosystem:

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

15 (2) Functional corridors for migratory species.

16 (3) Diverse and biologically appropriate habitats and ecosystem  
17 processes.

18 (4) Waterflows to support habitats and processes.

19 (5) Significantly reduced threats and stresses on the  
20 environment.

21 (d) (1) The Delta Plan shall include the following strategies for  
22 restoring a healthy estuary ecosystem.

23 (A) Restore large areas of interconnected habitats within the  
24 Delta and its watershed by 2100.

25 (B) Establish migratory corridors for fish, birds, and other  
26 animals along selected Delta river channels.

27 (C) Promote viable, diverse populations of native and valued  
28 species by reducing the risk of fish kills and the harm from invasive  
29 species.

30 (D) Restore Delta flows and channels to support a healthy Delta  
31 estuary.

32 (E) Improve water quality to meet drinking water, agriculture,  
33 and ecosystem long-term goals.

34 (2) The council shall consider the incorporation into the Delta  
35 Plan of actions designed to implement the strategies described in  
36 paragraph (1), as described in the Strategic Plan.

37 (e) In carrying out this section, the council shall make use of  
38 the best available science.

39 (f) The council shall review, in consultation with the  
40 commission, and report to the Legislature, by December 31, 2011,

1 regarding state agency management of lands in the Delta, including  
2 any recommendations to improve land acquisition and management  
3 activities of the conservancy.

4 85303. The Delta Plan shall promote statewide water  
5 conservation, efficiency, and sustainable use, through incorporation  
6 of relevant strategies and consistent with relevant actions described  
7 in the Strategic Plan. The council shall develop, and submit to the  
8 Legislature, its recommendations for legislation that is necessary  
9 to implement those actions.

10 85304. (a) The Delta Plan shall address the Delta’s needs for  
11 expanding options for water conveyance, water storage, and  
12 improved reservoir operations to achieve the coequal goals.

13 (b) The department, in consultation with the United States Army  
14 Corps of Engineers, shall prepare a proposal to integrate flood and  
15 water supply operations of the State Water Project and the federal  
16 Central Valley Project, and submit the proposal to the council for  
17 consideration and incorporation into the Delta Plan. In drafting  
18 the proposal, the department shall consider all related actions set  
19 forth in the Strategic Plan.

20 85305. (a) The Delta Plan shall attempt to reduce risks to  
21 people, property, and state interests in the Delta by promoting  
22 effective emergency preparedness, appropriate land uses, and  
23 strategic levee investments.

24 (b) The council shall incorporate into the Delta Plan the work  
25 of the California Emergency Management Agency with regard to  
26 its preparation of a proposed emergency preparedness and response  
27 strategy for the Delta pursuant to Section 12994.5.

28 (c) The council shall establish priorities in the Delta Plan for  
29 state investments in levee operation, maintenance, and  
30 improvements in the Delta, including both levees that are a part  
31 of the State Plan of Flood Control and privately owned levees. The  
32 priorities shall govern the expenditure of state funds for Delta  
33 projects or programs authorized pursuant to Chapter 2  
34 (commencing with Section 12310) of Part 4.8 of, and Part 9  
35 (commencing with Section 12980) of, Division 6. The council  
36 shall oversee the implementation of the priorities established  
37 pursuant to this subdivision.

38 (d) The Delta Plan may identify actions to be taken outside the  
39 Delta, where those actions are determined to significantly reduce  
40 flood risks in the Delta.

1 (e) The council may consider local plans of flood protection for  
2 incorporation into the Delta Plan.

3 (f) The council, in consultation with the Department of  
4 Transportation, shall address the effects of climate change and sea  
5 level rise on the three state highways that cross the Delta in the  
6 Delta Plan.

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

12 85306. (a) The Delta Plan shall meet all of the following  
13 requirements:

14 (1) Be based on the best available scientific information and  
15 the independent science advice provided by the Delta Independent  
16 Science Board.

17 (2) Include quantified or otherwise measurable targets associated  
18 with achieving the coequal goals.

19 (3) Provide for monitoring, data collection, and analysis of  
20 actions sufficient to determine progress toward meeting the  
21 quantified targets and the coequal goals.

22 (4) Integrate scientific and monitoring results into ongoing Delta  
23 water management.

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

27 (6) The adaptive management strategy shall accomplish all of  
28 the following:

29 (A) Reflect and synthesize existing knowledge about the Delta  
30 as a physical system.

31 (B) Describe the expectations or hypotheses about the effects  
32 of management actions included in the Delta Plan on the  
33 ecosystem, water supply, and other values.

34 (C) Recommend additional management actions expected to  
35 contribute to ecosystem or water supply and reliability  
36 improvements or are designed to contribute to a greater  
37 understanding of the Delta and its ecosystem.

38 (D) Identify and establish, under the review of the Delta  
39 Independent Science Board, the processes by which the data will  
40 be synthesized, hypotheses evaluated, and new management actions

1 that are recommended by the council, using the adaptive  
2 management program contained in the Bay Delta Conservation  
3 Plan and the Delta Plan.

4 (b) The council shall develop a procedure and process for  
5 revising the ecosystem restoration and water management actions  
6 in the Delta Plan as necessary to meet the requirements of  
7 subdivision (a).

8

9

CHAPTER 2. BAY DELTA CONSERVATION PLAN

10

11 85320. (a) The Legislature finds and declares that federal,  
12 state, and local agencies, as well as special districts and interested  
13 stakeholders, have initiated development of the Bay Delta  
14 Conservation Plan, which will make recommendations for habitat  
15 management, water supply reliability, and important regional  
16 conservation objectives. The Natural Resources Agency has  
17 provided the leadership for this initiative.

18

19 (b) The department shall propose, in conjunction with other  
20 federal, state, and local agencies, a conservation plan to the  
21 Department of Fish and Game that complies with the Natural  
22 Community Conservation Planning Act (Chapter 10 (commencing  
23 with Section 2800) of Division 3 of the Fish and Game Code).

23

24 (c) It is the intent of the Legislature that the Bay Delta  
25 Conservation Plan, with the agreement and participation of  
26 appropriate federal agencies, may also be developed as a habitat  
27 conservation plan for the purposes of Section 10 of the federal  
28 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

28

29 (d) To the maximum extent practicable, the department shall  
30 consult with the council during the development of the Bay Delta  
31 Conservation Plan.

31

32 (e) If the Bay Delta Conservation Plan complies with the Natural  
33 Community Conservation Planning Act, the Department of Fish  
34 and Game shall approve the Bay Delta Conservation Plan pursuant  
35 to the Natural Community Conservation Planning Act.

35

36 (f) The department shall prepare an environmental impact report  
37 for the Bay Delta Conservation Plan pursuant to the California  
38 Environmental Quality Act.

38

39 (g) The department shall inform the council that the department  
40 has completed all the actions necessary for the certification of the  
41 final environmental impact report. Notwithstanding Sections 15051

1 and 15090 of Title 14 of the California Code of Regulations, the  
2 council has exclusive authority to certify the final environmental  
3 impact report.

4 (h) The final environmental impact report shall be submitted to  
5 the Delta Independent Science Board for its review, and its findings  
6 shall be submitted to the council within 60 days of receipt.

7 (i) The council shall review and comment on the findings of the  
8 Delta Independent Science Board in a public hearing prior to  
9 certifying of the final environmental impact report.

10 (j) The council shall incorporate the Bay Delta Conservation  
11 Plan into the Delta Plan, if it determines in writing, based on best  
12 available science, and after holding at least one public hearing,  
13 that all of the following apply:

14 (1) The Bay Delta Conservation Plan and the final environmental  
15 impact report, are based on the best available scientific information,  
16 and contain a comprehensive investigation and analysis of all of  
17 the following:

18 (A) The volume, quality, and timing of water required for a  
19 healthy Delta estuarine ecosystem under different conditions  
20 including seasonal, annual, and interannual bases, and including  
21 an assessment of increased spring and fall outflow and increased  
22 San Joaquin River inflow.

23 (B) A full range of Delta conveyance alternatives including  
24 through-Delta dual conveyance and isolated conveyance  
25 alternatives. This analysis shall be in consultation with the  
26 Department of Fish and Game, and shall fully consider the impact  
27 these options have on in-Delta, Sacramento River, and estuarine  
28 ecological processes and functions, including the assessment of  
29 increased spring and fall outflow, and increased San Joaquin River  
30 inflow.

31 (C) The alternatives described in subparagraph (B) that also  
32 considers capacity and design options of a lined canal, an unlined  
33 canal, and pipelines.

34 (D) The potential effects of climate change, possible sea level  
35 rise of at least 55 inches, and possible changes in total precipitation  
36 and runoff patterns on the conveyance alternatives and habitat  
37 restoration activities considered in the environmental impact report.

38 (E) Potential impacts on migratory fish and aquatic resources,  
39 at both the population and ecosystem levels, upstream of the Delta.

1 The Bay Delta Conservation Plan shall design monitoring programs  
2 to systematically gather needed data.

3 (F) Potential impacts resulting from implementation of the Bay  
4 Delta Conservation Plan on Sacramento River and San Joaquin  
5 River flood management.

6 (G) Alternatives described in subparagraph (B) for resilience  
7 and recovery in the event of catastrophic loss caused by earthquake  
8 or flood or other natural disaster. This evaluation shall include an  
9 analysis of the conveyance options based on a common level of  
10 seismic and flood durability.

11 (H) The probability of achieving current Delta water quality for  
12 each of the conveyance alternatives.

13 (2) The Bay Delta Conservation Plan includes the following  
14 elements:

15 (A) An objective that the fisheries management activities  
16 described in the Bay Delta Conservation Plan will achieve results  
17 that meet or exceed the goals in existing species recovery plans  
18 and the state and federal salmon doubling goal.

19 (B) A science-based and formal adaptive management program  
20 developed in compliance with the adaptive management  
21 requirements of the Natural Community Conservation Planning  
22 Act (Chapter 10 (commencing with Section 2800) of Division 3  
23 of the Fish and Game Code) and the Delta Plan that is reviewed  
24 by the Delta Independent Science Board and that integrates  
25 scientific and monitoring results into ongoing Delta water  
26 management. The adaptive management strategy that is contained  
27 in the Bay Delta Conservation Plan or the final environmental  
28 impact report meet all of the following requirements:

29 (i) Reflects and synthesizes existing knowledge about the Delta  
30 as a physical system.

31 (ii) Describes expectations or hypotheses about the effects of  
32 management actions included in the Delta Plan on the ecosystem,  
33 water supply, and other values.

34 (iii) Recommends additional management actions expected to  
35 contribute to ecosystem or water supply and reliability  
36 improvements or are designed to contribute to greater  
37 understanding of the Delta and its ecosystem.

38 (iv) Identifies and establishes, with review of the Delta  
39 Independent Science Board, the processes by which the data will  
40 be synthesized, hypotheses evaluated, and new management actions

1 that are recommended by the council, using the adaptive  
2 management program contained in the Bay Delta Conservation  
3 Plan and the Delta Plan.

4 85321. The council and the Delta Independent Science Board  
5 shall evaluate annually the Bay Delta Conservation Plan, if it is  
6 adopted, with regard to the achievement of its objectives. The  
7 council shall submit each evaluation to the Legislature and the  
8 Bay Delta Conservation Plan permitting agencies.

9 85322. Nothing in this chapter amends or otherwise affects the  
10 Natural Community Conservation Planning Act (Chapter 10  
11 (commencing with Section 2800) of Division 3 of the Fish and  
12 Game Code).

13  
14 CHAPTER 3. OTHER PLANS FOR THE DELTA  
15

16 85350. The council may incorporate other completed plans  
17 related to the Delta into the Delta Plan to the extent that the other  
18 plans promote the coequal goals.

19 SEC. 2. This act shall only become operative if \_\_\_\_ of the  
20 2009–10 Regular Session of the Legislature are enacted and  
21 become effective on or before January 1, 2010.