

PREPRINT SENATE BILL No. 1

Proposed by Senator Simitian

August 4, 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 SB 1, as proposed, Simitian. Sacramento-San Joaquin Delta.

(1) 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 Delta Stewardship Council to advance the coequal goals of assuring a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and certain values of the Delta. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The council would be required to establish, by regulation, a consultation process for the purposes of the act. The bill would subject plans prepared by certain state agencies to review by the council to determine consistency with the Delta Plan, to be adopted pursuant to ____ of the 2009–10 Regular Session of the Legislature.

The bill would establish the Delta Independent Science Board, whose members would be selected by the council. The bill would require the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

The bill would require the Delta Plan to provide for financing of all Delta programs consistent with specified “beneficiaries pay” principles. The bill would specify costs to be borne by persons or entities that



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contract to receive water from the State Water Project or the federal Central Valley Project. The bill would require the council to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. The bill would require the moneys generated by the imposition of the fee to be deposited in an unspecified fund, which the bill would establish in the State Treasury. The moneys in the fund, upon appropriation by the Legislature, would be required to be expended according to a specified schedule, for purposes that include the completion of the Delta Plan, the implementation of specified early actions, and the payment of the costs incurred by the council and the costs of facilities and activities intended to mitigate certain damage to fish populations and other natural resources in the Delta.

The bill would require the 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 board to appoint a special master for the Delta, referred to as the Delta Watermaster. The Delta Watermaster would be vested with all of the statutory enforcement authority granted to the board to direct daily operations of all surface water diversions within the Delta watershed. The decisions of the Delta Watermaster would be appealed to an administrative law judge, appointed by the board. The administrative law judge would be authorized to issue an order that stays a decision of the Delta Watermaster, subject to review by the board.

(2) These provisions 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:

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

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4 PART 1. GENERAL PROVISIONS

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6 CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS

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8 85000. This division shall be known, and may be cited, as the
9 Sacramento-San Joaquin Delta Reform Act of 2009.

10 85001. The Legislature finds and declares that:

11 (a) The Sacramento-San Joaquin Delta watershed and
12 California's water infrastructure are in crisis and existing Delta
13 policies are not sustainable. Protecting the public trust and
14 improving the stewardship of these precious resources requires
15 fundamental reorganization of the state's management of Delta
16 watershed resources.

17 (b) The Legislature finds and declares that, in response to the
18 Delta crisis, the Legislature and the Governor required development
19 of a new long-term strategic vision for managing the Delta. The
20 Governor appointed a Blue Ribbon Task Force to recommend a
21 new "Delta Vision Strategic Plan" to his cabinet committee, which,
22 in turn, made recommendations for a Delta Vision to the Governor
23 and the Legislature on January 3, 2009.

24 (c) By enacting this division, it is the intent of the Legislature
25 to facilitate the implementation of a program for the sustainable
26 management of the Sacramento-San Joaquin Delta ecosystem and
27 to establish a governance structure that will direct efforts across
28 state agencies to develop a legally enforceable California Delta
29 Ecosystem and Water Plan.

30 85002. The Legislature finds and declares that Sacramento-San
31 Joaquin Delta, referred to as "the Delta" in this division, is a
32 critically important natural resource for California and the nation.
33 It serves Californians concurrently as both the hub of the California
34 water system and the most valuable estuary ecosystem on the west
35 coast of North and South America.

36 85003. The Legislature finds and declares all of the following:

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

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

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

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

21
22 CHAPTER 2. DELTA POLICY
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24 85020. (a) The coequal goals shall be the standard for
25 long-term management of Delta water and environmental resources.

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

29 (1) Manage the Delta's water and environmental resources over
30 the long-term to achieve the coequal goals.

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

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

35 (4) Promote statewide water conservation, efficiency, and
36 sustainable use.

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

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

1 (7) Improve the existing water conveyance system and expand
2 statewide water storage.

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

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

9 85021. The policy of the State of California is to reduce
10 dependence on water from the Delta watershed, over the long-term,
11 for statewide water supply reliability. Each region that depends
12 on water from the Delta shall improve its regional self-reliance
13 for water through investment in water-use efficiency, water
14 recycling, advanced water technologies, local and regional water
15 supply projects, and improved regional coordination of local and
16 regional water supply efforts.

17 85022. (a) It is the intent of the Legislature that state and local
18 land use actions are consistent with the Delta Plan, including the
19 commission's resources management plan. This section's findings,
20 policies, and goals apply to Delta land-use planning and
21 development.

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

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

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

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

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

37 (4) That existing developed uses, and future developments that
38 are carefully planned and developed consistent with the policies
39 of this division, are essential to the economic and social well-being

1 of the people of this state and especially to working persons living
2 and working in the Delta.

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

5 (1) Protect, maintain, and, where feasible, enhance and restore
6 the overall quality of the Delta environment and its natural and
7 artificial resources.

8 (2) Ensure orderly, balanced utilization and conservation of
9 Delta resources taking into account the social and economic needs
10 of the people of the state.

11 (3) Maximize public access to Delta resources and maximize
12 public recreational opportunities in the Delta consistent with sound
13 resources conservation principles and constitutionally protected
14 rights of private property owners.

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

17 (5) Encourage state and local initiatives and cooperation in
18 preparing procedures to implement coordinated planning and
19 development for mutually beneficial uses, including educational
20 uses, in the Delta.

21 85023. The longstanding constitutional principle of reasonable
22 use and the public trust doctrine shall be the foundation of state
23 water management policy and are particularly important and
24 applicable to the Delta.

25
26 CHAPTER 3. MISCELLANEOUS PROVISIONS
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28 85031. This division does not diminish, impair, or otherwise
29 affect any area of origin, watershed of origin, county of origin, or
30 any other water rights protections provided under the law. This
31 division does not limit or otherwise affect the application of
32 Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463,
33 and Sections 12200 to 12220, inclusive.

34 85032. This division does not affect the Natural Community
35 Conservation Planning Act (Chapter 10 (commencing with Section
36 2800) of Division 3 of the Fish and Game Code).

37 85033. This division does not expand the liability of the state
38 for flood protection in the Delta or its watershed.

CHAPTER 4. DEFINITIONS

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

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

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

85054. “Coequal goals” means the goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

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

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

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

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

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

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

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

85063. “Private water agency” means a public utility as defined in Section 216 of the Public Utilities Code that provides water

1 service as defined in Section 515 or a mutual water company as
2 defined in Section 2725 of the Public Utilities Code.

3 85064. “Public water agency” means a public entity, as defined
4 in Section 514, that provides water service, as defined in Section
5 515.

6 85065. “Restoration” means the application of ecological
7 principles to restore a degraded or fragmented ecosystem and return
8 it to a condition in which its biological and structural components
9 achieve a close approximation of its natural potential.

10 85066. “Strategic Plan” means both the “Delta Vision Strategic
11 Plan” issued by the Delta Vision Blue Ribbon Task Force on
12 October 17, 2008, and the “Delta Vision Implementation Report”
13 adopted by the Delta Vision Committee and dated December 31,
14 2008. Where the two documents conflict, the “Delta Vision
15 Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force
16 shall prevail.

17
18 PART 2. EARLY ACTIONS
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20 85080. Upon appointment of a quorum of the council, the
21 council shall assume responsibility for overseeing implementation
22 of early actions, as provided in this part. The council may identify
23 early actions in addition to those identified in this part pertaining
24 to transportation, utilities, recreation, water supply, ecosystem
25 improvements, and flood control.

26 85081. (a) Within 60 days of the appointment of a quorum of
27 the council, the council shall request a list of nominees to serve
28 on the Delta Independent Science Board from the Director of the
29 University of California Center for Water Resources and the
30 Director of the United States Geologic Survey office in
31 Sacramento.

32 (b) The council shall appoint persons to serve on the Delta
33 Independent Science Board, as established in Section 85280, within
34 30 days of receiving the list of nominees.

35 85082. Within 120 days of the appointment of a quorum of the
36 council, the council shall develop and implement a strategy to
37 appropriately engage participation of the federal agencies with
38 responsibilities in the Delta. This strategy may include developing
39 the Delta Plan consistent with the federal Coastal Zone
40 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal

1 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of
2 the federal Reclamation Act of 1902.

3 85083. Within 120 days of the appointment of a quorum of the
4 council, the council shall begin developing information necessary
5 to develop the Delta Plan in accordance with this division,
6 including, but not limited to, all of the following:

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

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

12 85084. The council shall develop an interim plan that includes
13 recommendations for early actions, projects, and programs
14 including, but not limited to, the following:

15 (a) Develop and implement an interim finance strategy for
16 developing the Delta Plan and taking the early actions described
17 in this part.

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

20 (c) Designate the department and the Department of Fish and
21 Game to implement near-term restoration projects, including, but
22 not limited to, Dutch Slough tidal marsh restoration, Meins Island
23 tidal marsh restoration, and floodplain improvements in the Yolo
24 Bypass.

25 (d) Direct the Department of Fish and Game, consistent with
26 the board's determinations of instream flow needs in the Delta
27 pursuant to Section 85086, to submit information and any
28 recommendations as to the Delta's instream flow needs to the
29 board by April 1, 2010. The information shall include only
30 information in its possession that the Department of Fish and Game
31 deems reliable.

32 85085. The department shall do all of the following:

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

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

37 (c) Construct demonstration fish protection screens at Clifton
38 Court Forebay.

39 (d) Assist the Department of Fish and Game in implementing
40 early action ecosystem restoration projects, including, but not

1 limited to, Dutch Slough tidal marsh restoration, Meins Island tidal
2 marsh restoration, and floodplain improvements in the Yolo
3 Bypass.

4 85086. (a) The board shall establish an effective system of
5 Delta watershed diversion data collection and public reporting by
6 December 31, 2010.

7 (b) It is the intent of the Legislature to establish an accelerated
8 process, that is distinct from the imposition of minimum instream
9 flow requirements pursuant to Section 1257.5, to determine
10 instream flow needs of the Delta and its tributaries. It is the further
11 intent of the Legislature that this accelerated process will facilitate
12 the planning decisions that are required to achieve the objectives
13 of the Delta Plan and the coequal goals. These determinations do
14 not affect the statutory rights of any party to adjudicate statutory
15 instream flow requirements.

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

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

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

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

37 (e) The board, by December 31, 2010, shall submit a prioritized
38 schedule to complete determinations as to instream flow needs for
39 the Delta and for high priority rivers and streams in the Delta
40 watershed, not otherwise described in subdivision (c), by 2012,

1 and for all major rivers and streams outside the Delta by 2018. In
2 developing this schedule, the board shall consult with the
3 Department of Fish and Game as to the timing of its submission
4 of recommendations for instream flow needs.

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

8 (g) The instream flow need determinations required by this
9 section shall be subject to judicial review only in the Court of
10 Appeals for the Third District, and that court may designate a
11 special master or an administrative law judge for the purpose of
12 assisting the court. The Court of Appeals review shall be based on
13 the board's administrative record. The judicial standard of review
14 shall be whether the board's determinations as to necessary
15 instream flows were arbitrary and capricious.

16
17 PART 3. DELTA GOVERNANCE

18
19 CHAPTER 1. DELTA STEWARDSHIP COUNCIL

20
21 85200. (a) The Delta Stewardship Council is hereby established
22 to advance the coequal goals.

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

30 (2) The initial term of office of each member of the council
31 shall be two, four, or six years, as specified in subdivision (c), and
32 all subsequent terms shall be eight years.

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

38 (c) The Governor, upon the Governor's appointment of members
39 pursuant to subdivision (b), shall designate his or her appointments
40 as serving initial terms of either two or four years. One class shall

1 have three members and the other two classes shall have two
2 members each. For the class that has three members, the terms of
3 office shall be two years. The second class, composed of two
4 members, shall serve four years. The third class, composed of two
5 members, one each appointed by the Senate Rules Committee and
6 the Speaker of the Assembly, by July 1, 2010, shall serve six years.
7 Thereafter, the terms of all succeeding members shall be eight
8 years.

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

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

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

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

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

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

27 (c) The council shall appoint an executive officer who shall
28 serve full time.

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

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

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

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

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

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

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

9

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

12

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

14 (a) To sue or be sued.

15 (b) To enter into contracts.

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

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

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

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

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

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

30 (i) To adopt regulations as required for the implementation of
31 this division.

32 (j) To obtain and hold regulatory permits and prepare
33 environmental documents.

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

37 (l) To hold hearings and conduct investigations in all parts of
38 the state necessary to carry out the powers vested in it, and for
39 those purposes has the powers conferred upon the heads of state
40 departments pursuant to Article 2 (commencing with Section

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

8 85211. The Delta Plan shall include performance measurements
9 that will enable the council to track progress in meeting the coequal
10 goals and the objectives of the Delta Plan. The performance
11 measurements shall include, but need not be limited to, quantitative
12 or otherwise measurable assessments of the status and trends in
13 all of the following:

14 (a) The health of the Delta’s estuary ecosystem for supporting
15 aquatic and terrestrial species, habitats, and processes.

16 (b) Viable populations of Delta fisheries and other aquatic
17 organisms.

18 (c) The reliability of California water supply connected to the
19 Delta.

20 85212. (a) The council, by regulation, shall adopt a
21 consultation process for the purposes of this division, which shall
22 include remedies, with all state agencies, departments, boards, and
23 commissions that have specified responsibilities to develop,
24 implement, monitor, and adhere to all or part of the Delta Plan.
25 These regulations shall ensure, to the maximum extent practicable,
26 that the actions of these entities achieve the coequal goals and are
27 consistent with the Delta Plan. Pursuant to these regulations, the
28 council is granted authority to initiate consultation and require a
29 remedy when an action or omission of action by these entities are
30 contrary to the Delta Plan or could contribute to the failure of
31 achieving the coordinated and timely achievement of the coequal
32 goals.

33 (b) The council shall accept comments from the public and
34 stakeholders regarding state agency actions or omission of actions
35 that may be inconsistent with the Delta Plan or could contribute
36 to the failure of achieving the coordinated and timely achievement
37 of the coequal goals. The council shall review the comments and
38 either initiate consultation or respond in writing as to why a
39 consultation is not needed or justified.

1 85215. To ensure effective coordination and consistency with
2 the Delta Plan, the council shall identify those state agency plans
3 that should be reviewed by the council, and if necessary amended
4 to be consistent with Delta Plan. In addition to other plans
5 identified by the council, the following state agencies and the
6 specified plans shall be subject to review by the council to
7 determine consistency with the Delta Plan:

8 (a) The Delta Protection Commission’s Resource Management
9 Plan.

10 (b) The Delta Conservancy’s Strategic Plan.

11 (c) The Suisun Marsh Management Plan.

12 (d) All annual water project operation plans.

13 85216. Within 180 days from the date of the adoption of the
14 Delta Plan or any amendments or updates to the Delta Plan by the
15 council, the state agencies shall submit their plans, as described
16 in Section 85215, or their proposed amendments to those plans,
17 to the council for review.

18 85217. The council shall act on the proposed state agency plan
19 or plan amendments within 60 days from the date of submittal of
20 the proposed plan or plan amendments. The council shall either
21 determine the plan or plan amendments are consistent with the
22 Delta Plan or remand the plan or amendments to the state agency
23 for reconsideration. The council shall approve or remand the
24 proposed plan or plan amendments by a majority vote of the
25 council membership only after concluding that the plan is
26 consistent with the Delta Plan.

27 85218. A state agency shall adopt its proposed plan or plan
28 amendment within 120 days after their approval by the council.

29 85319. (a) Any water conveyance facility proposed to be
30 constructed within or around the Delta shall be authorized by the
31 council pursuant to this division and consistent with the council’s
32 obligation to comprehensively address the coequal goals, including,
33 but not limited to, water supply reliability.

34 (b) Prior to taking any action to authorize the construction of
35 any water conveyance facility within or around the Delta, the
36 council shall make the following determinations:

37 (1) The board has adopted instream flow determinations for the
38 Sacramento River and waterways within the Delta that provide
39 the volume, quality, and timing of water required for a healthy
40 Delta ecosystem under different conditions, including seasonal,

1 annual, and interannual bases, and including an assessment of
2 increased spring and fall outflow and increased San Joaquin River
3 inflow.

4 (2) Each water agency that relies on water exports from the
5 Delta watershed has submitted to the council a contingency plan
6 for Delta water supply curtailments and drought, consistent with
7 the board’s instream flow requirements, and a long-term plan for
8 reducing reliance on those exports.

9 (3) The proposed water conveyance facility will be operated in
10 a manner consistent with achieving the coequal goals.

11 85220. Nothing in this chapter affects the authority of the
12 Department of Fish and Game or the board.

13
14 CHAPTER 3. DELTA WATERMASTER
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16 85230. (a) The board shall appoint a special master for the
17 Delta, whose title shall be “the Delta Watermaster.”

18 (b) The council shall provide a list to the board recommending
19 at least one candidate to serve as the Delta Watermaster. The initial
20 recommendation shall be made within 90 days of the appointment
21 of a quorum of the council. The council shall make subsequent
22 recommendations within 60 days of notification by the board of a
23 vacancy.

24 (c) The council shall recommend individuals who have extensive
25 knowledge and experience in one or more of the following areas:

- 26 (1) Water rights laws or water rights enforcement.
- 27 (2) Water quality laws or water quality enforcement.
- 28 (3) State Water Project or federal Central Valley Project
29 operations.
- 30 (4) State or federal endangered species laws or endangered
31 species enforcement.

32 (d) The board shall select one individual from the list provided
33 by the council to act as the Delta Watermaster, within 60 days of
34 receipt of the list. If the board finds, that none of the candidates
35 meet the requirements of this chapter, the board shall notify the
36 council of that finding and that a vacancy exists.

37 85231. (a) The Delta Watermaster shall be an agent of the
38 board, and shall be vested with all of the statutory enforcement
39 authority granted to the board to direct daily operations of all
40 surface water diversions within the Delta watershed. The Delta

1 Watermaster’s authority shall include, but is not be limited to, the
2 duty to do all of the following:

- 3 (1) Enforce water rights for diversions.
- 4 (2) Exercise the state’s public trust responsibilities.
- 5 (3) Enforce the California Endangered Species Act (Chapter
6 1.5 (commencing with Section 2050) of Division 3 of the Fish and
7 Game Code) as to diversions.
- 8 (4) Make judgments as to reasonable use pursuant to Section 2
9 of Article X of the California Constitution.
- 10 (5) Enforce water quality objectives established in the Delta
11 Water Quality Control Plan.
- 12 (6) Consider and decide on petitions for changes, with a duration
13 of 90 days or less, in water right permits or licenses for diversions
14 within the Delta watershed.

15 (b) The board shall amend the terms and conditions of water
16 right permits or licenses for diversions within the Delta watershed
17 to delegate authority to the Delta Watermaster to act on the board’s
18 behalf.

19 85232. Delta Watermaster decisions may be appealed to an
20 administrative law judge, which shall be appointed by the board
21 to consider appeals pursuant to this section. The administrative
22 law judge may issue an order that stays a decision by the Delta
23 Watermaster pending a full board review of the decision, if the
24 administrative law judge determines that the decision of the Delta
25 Watermaster was not supported by substantial evidence in the
26 record. An order of the administrative law judge that stays an order
27 of the Delta Watermaster shall be set for hearing before the full
28 board at the earliest possible meeting.

29

30 CHAPTER 4. DELTA INDEPENDENT SCIENCE BOARD

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32 85280. (a) The Delta Independent Science Board is hereby
33 established in state government. The Delta Independent Science
34 Board shall have no more than 11 members, and shall include, but
35 not be limited to, employed or retired scientists from federal and
36 state agencies not having major project or regulatory authority
37 over the Delta, the University of California, the California State
38 University, and nongovernmental organizations.

39 (b) The council shall appoint members to the Delta Independent
40 Science Board in accordance with Section 85081.

1 (c) The council shall select a chairperson from among the
2 members.

3 (d) Scientists appointed to the Delta Independent Science Board
4 shall have knowledge of hydrology, geomorphology, biology,
5 climatology, economics, soils and civil engineering, seismology,
6 geology, or other disciplines relevant to the management of the
7 Delta watershed, as determined by the board.

8 85281. (a) The Delta Independent Science Board shall develop
9 a scientific program to do all of the following:

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

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

14 (3) Review major projects undertaken to advance the goals of
15 Delta Vision, upon request of the council, the conservancy, the
16 commission, an independent water system operator, or the board.

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

20 (5) Establish communication channels to effectively transmit
21 science and engineering results to broader and more diverse
22 audiences through coordination with the council’s public advisory
23 group.

24 (6) Prepare discussion papers and interactive lectures.

25 (b) The board shall submit to the council an annual plan as to
26 the most critical scientific issues requiring study. The council shall
27 review that plan and may add topics for scientific inquiry.

28 85282. (a) The Delta Independent Science Board shall prepare
29 an annual report for submission to the council on scientific issues
30 related to the Delta.

31 (b) The Delta Independent Science Board shall include in the
32 report scientific and technical findings regarding the management
33 of the Delta and recommended actions of the council, an
34 identification of short-term and long-term matters for research,
35 and a description of the relevance of these matters to achieving
36 the coequal goals.

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PART 5. DELTA FINANCE

CHAPTER 1. GENERAL

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85400. (a) “Beneficiary pays principle” means the allocation of project or program costs to beneficiaries in approximate proportion to the benefits received.

(b) For the purposes of applying the beneficiary pays principle, the following terms have the following meanings:

(1) “Benefit” means either a public benefit, private benefit, or shared benefit.

(2) “Private benefit” means either of the following:

(A) An improvement required as a means of meeting mitigation or other requirements associated with a project or permit.

(B) An enhancement or improvement where an individual or group of individuals can be identified as beneficiaries.

(3) “Shared benefit” means an improvement where there are public benefits and private benefits.

85401. The Delta Plan shall provide for financing of all Delta programs consistent with “beneficiaries pay” principles.

(a) For the purposes of implementing the beneficiaries pay principles, all of the following requirements apply:

(1) State funds shall fund projects that have public benefits. State funds shall not fund projects that do not have public benefits.

(2) Nonstate funds shall fund projects that have private benefits. Nonstate funds shall not fund projects that do not have private benefits.

(3) Where both private and public benefits are identified for a project, both project beneficiaries and the public are responsible for costs associated with the project in proportion to the benefits received.

(4) Notwithstanding paragraphs (1), (2), and (3), the council may allocate available state funds to pay for costs associated with a project that benefits a disadvantaged community, as defined in Section 79505.5.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), fee revenues shall fund projects and programs consistent with the fee authorization.

(2) Notwithstanding paragraph (2) of subdivision (a), federal funds shall fund projects and programs consistent with the federal authorization.

1 85402. Not later than ____ of each year, the council shall
2 develop and adopt a ____ year estimate, in annual increments, of
3 all federal and state funds reasonably expected to be available
4 during the following ____ fiscal years to implement the Delta Plan.

5 (a) (1) For the purpose of estimating revenues, the council shall
6 assume that there will be no changes in existing state and federal
7 statutes.

8 (2) If a general obligation bond measure has qualified for the
9 ballot that would provide funds to implement the Delta Plan, the
10 council may, in addition to the estimate of revenues developed
11 pursuant to paragraph (1), develop an alternative estimate to reflect
12 the approval of the bond measure.

13 (b) For the purposes of expenditures, the council shall prepare
14 estimates with regard to the following:

15 (1) Annual expenditures for the administration of the council
16 shall be not less than those expenditures authorized in the most
17 recent Budget Act, adjusted for inflation.

18 (2) Annual expenditures for programs and projects identified
19 in the Delta Plan.

20 (c) The estimate shall identify programs and projects that were
21 accelerated or delayed from the prior year estimate, and the reason
22 for the acceleration or delay.

23 85403. The activities of the council constitute a regulatory and
24 resources management program, and also include the coordination
25 of complex interactive regulatory and resources management
26 programs administered by other agencies. The principle purpose
27 of this program is to achieve the coequal goals and implement the
28 Delta Plan.

29 85403.5. The council shall develop a finance plan that ensures
30 the necessary funding to fulfill the goals of the Delta Plan and to
31 mitigate the impacts of implementing the Delta Plan.

32

33 CHAPTER 2. STATE WATER PROJECT AND CENTRAL VALLEY
34 PROJECT
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36 85404. (a) The following actions and projects are subject to
37 the provisions of this division and shall be paid for entirely by
38 persons or entities that contract to receive water from the State
39 Water Project and by persons or entities who contract to receive
40 water from the federal Central Valley Project:

1 (1) The environmental review, planning, design, construction,
2 and operation of any new Delta water conveyance facility,
3 including all alternatives considered in the Bay Delta Conservation
4 Plan or any environmental impact report that analyzes the Bay
5 Delta Conservation Plan or certifies that plan.

6 (2) Any necessary mitigation to reduce environmental damage
7 caused by water export operations and to produce higher quality
8 water for purposes of export, including activities intended to
9 mitigate for damage to fish populations and other natural resources
10 in the Delta and its tributaries that are reasonably related to the
11 export of water and other activities of the State Water Project and
12 the federal Central Valley Project.

13 (b) Nothing in this section affects the ability of the council to
14 issue revenue bonds, pursuant to Chapter 4 (commencing with
15 Section 85407), to finance a project described in this section.

16
17 CHAPTER 3. OTHER USERS OF WATER FROM THE BAY-DELTA
18 WATERSHED
19

20 85405. (a) There is hereby imposed an annual fee on each
21 person or entity who holds a right, permit, or license to divert water
22 within the watershed of the San Francisco Bay/Sacramento-San
23 Joaquin Delta. The fee shall apply to holders of water rights,
24 including riparian rights, appropriative rights without regard to
25 the date on which those rights were perfected, pueblo rights, or
26 any other rights to use water within the Delta watershed.

27 (b) Until December 31, 2012, the council shall establish fees in
28 an amount that provides only for the funding necessary to complete
29 the Delta Plan, establish the council, and implement the early
30 actions identified in Part 2 (commencing with Section 85080). The
31 council shall establish these fees initially by emergency regulation.

32 (c) Commencing January 1, 2013, and each year thereafter, the
33 council shall, by regulation, set the fee schedule authorized by this
34 section so that the total revenue collected from the fees equals the
35 appropriate proposed annual budget; or, so that the total revenue
36 collected from the fees equals the amount needed in the council's
37 judgment to accomplish both the following:

38 (1) To pay the costs of facilities and program activities intended
39 to mitigate damage to fish populations and other natural resources
40 in the Delta and its tributaries that are reasonably related to the

1 diversion of water and other activities of the holder of water rights
2 subject to this section.

3 (2) To pay the administrative costs and other costs of the council
4 related to council activities financed pursuant to this part, including
5 all costs incurred by the council or any other agency in establishing,
6 administering, defending, or collecting the fees authorized pursuant
7 to this section.

8 (d) The council shall set the fee schedule authorized by this
9 section so that both of the following requirements are met:

10 (1) The fees paid by each person or entity pursuant to this section
11 bear a fair and reasonable relationship to the environmental damage
12 within the Delta or its tributaries committed in the past or occurring
13 in the present, or likely to occur in the future, from the person's
14 or entity's diversion of water that is subject to fees pursuant to this
15 part.

16 (2) The fees paid by each person or entity bear a fair and
17 reasonable relationship to the administrative and other costs of
18 council activities financed pursuant to this part.

19 (e) Regulations adopted pursuant to this part may include
20 provisions concerning the administration and collection of the fees.
21 The fee schedule may be graduated as determined by the council
22 to be necessary or advisable to meet the requirements of this
23 chapter. The council may amend or revise regulations adopted
24 pursuant to this part from time to time as it determines necessary
25 or advisable.

26 (f) The council shall review and revise the fees each fiscal year
27 as necessary to conform to the requirements of this part. If the
28 council determines that the revenue collected during the preceding
29 fiscal year was greater than or less than the revenues required in
30 the judgment of the council to satisfy the purposes of this part, the
31 council may further adjust the annual fees to compensate for the
32 over or under collection of revenue.

33 85406. (a) The fees imposed pursuant to this part shall be
34 administered and collected by the State Board of Equalization
35 pursuant to the fee collection procedures law, (Part 30
36 commencing with Section 55001) of Division 2 of the Revenue
37 and Taxation Code).

38 (b) The fee revenue shall be deposited in the ____ Fund which
39 is hereby created in the State Treasury. Moneys in the fund, upon
40 appropriation by the Legislature, shall be expended for the purpose

1 of this part, including the State Board of Equalization’s costs of
2 collection and administration of fees. All interest earned on the
3 moneys which have been deposited in the ____ Fund shall be
4 retained in the fund.

5 (c) The fees collected pursuant to this chapter and the earnings
6 therefrom shall be used solely for the purposes of implementing
7 this chapter. The council shall not collect fees pursuant to this
8 chapter in excess of the amount that is reasonably anticipated by
9 the council to fully implement this chapter.

10

11 CHAPTER 4. BONDS

12

13 85407. (a) For the purpose of providing money and funds to
14 pay the cost and expense of carrying out this part, the council may,
15 from time to time, issue bonds in the form and manner provided
16 in Chapter 8 (commencing with Section 11700) of Part 3 of
17 Division 6, except that for purposes of this chapter the following
18 definitions shall apply:

19 (1) The word “department” in that Chapter 8 means the council.

20 (2) Bonds issued pursuant to this chapter shall be identified
21 pursuant to Section 11705 as Delta Stewardship Council bonds.

22 (b) Payment and redemption of the bonds pursuant to that
23 Chapter 8 shall be secured by a first and direct charge on revenues
24 derived from fees collected pursuant to this part.

25 (c) Bonds and other documents prepared pursuant to this chapter
26 shall be signed by the executive officer of the council.

27 (d) Proceeds of bonds issued pursuant to this chapter shall be
28 deposited in the ____ Fund, as determined to be appropriate by
29 the council.

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution for certain
32 costs that may be incurred by a local agency or school district
33 because, in that regard, this act creates a new crime or infraction,
34 eliminates a crime or infraction, or changes the penalty for a crime
35 or infraction, within the meaning of Section 17556 of the
36 Government Code, or changes the definition of a crime within the
37 meaning of Section 6 of Article XIII B of the California
38 Constitution.

39 However, if the Commission on State Mandates determines that
40 this act contains other costs mandated by the state, reimbursement

1 to local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

4 SEC. 3. This bill shall only become operative if ____ of the
5 2009–10 Regular Session of the Legislature are enacted and
6 become effective on or before January 1, 2010.

DRAFT